PART ONE: SUMMARY OF EVIDENCE

I. THE FBI CAMPAIGN TO "NEUTRALIZE" THE PANTHERS

A. FBI'S COUNTERINTELLIGENCE PROGRAM AGAINST BLACK PEOPLE

National and Local Policy

In August 1967, Defendant MARLIN JOHNSON, Special Agent in Charge (SAC) of the Chicago FBI office, received instructions to his personal attention from the Director of the FBI to set up a "counterintelligence" program directed against militant black leaders and organizations in the Chicago area. The express purpose of this program was to "expose, disrupt, misdirect, discredit and otherwise neutralize" these leaders and their organizations.* Conflicts between leaders and organizations were to be fully exploited, and the media manipulated in achieving these goals. Defendant JOHNSON was instructed to assure that the program was given his necessary and continued attention, to overlook no opportunities for counterintelligence action, and to take an imaginative and enthusiastic approach to these activities. [PL #1] Above all, Defendant JOHNSON was cautioned not to let a word of this program escape the Bureau walls, in order not to "embarrass the Bureau." [PL #1]

In early March 1968, Defendant Johnson received another set of instructions from Director Hoover--again directed to his personal attention. These instructions set forth in greater detail the goals of the counterintelligence program as it was to be directed in Chicago against the black movement. JOHNSON was

*Among the organizations singled out by the Bureau were: Southern Christian Leadership Conference, Student Non-violent Coordinating Committee (SNCC), Revolutionary Action Movement (RAM), and the Nation of Islam. The Court would not allow these organizations to be shown as targets, and would not even allow the information revealed to the Plaintiffs. [Tr. 3523 , in camera; 5956] This information is therefore gleaned from the Senate Select Committee on Intelligence Staff Report on Intelligence Activities and the Rights of Americans, Book III, p. 187. [PL # C, 5/13/76][See also PL #1.] Also see Appendix "B".

instructed that his program must prevent the rise of a "messiah" (i.e. leadership) who could unite and inspire the black movement. Among the leaders targetted were Stokely Carmichael, Martin Luther King, and Elijah Muhammed.* [Tr. 3790-807]**

Johnson was further instructed that his program should prevent coalitions and unity among black organizations and should curtail their growth. Additionally, all methods were to be used to smear and discredit black leaders and organizations in the public eye--with liberals, the white community, the black community, and black militants. These instructions outlined as an important principle of the program the use of local law enforcement agencies to harass and disrupt black nationalist groups.*** The program in Chicago was to concentrate on leaders targeted by the Bureau in their "Rabble Rouser" and "Agitator" Indexes. Defendant JOHNSON was to appoint an agent from his Racial Matters Squad**** to supervise this program, but all the agents in the Squad were to be apprised of the program and required to participate in it.[PL #2]

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*The Court would only allow Stokely Carmichael's name in evidence [Tr. 3776-807, in camera] even though this information would have been invaluable in showing the true nature of the counterintelligence program, as well as to expose Defendant JOHNSON's self-serving claim that the purpose of the program was to "prevent violence." [Tr. 4059-66] See also: motion filed 2/24/76, Tr. 11676-96.

**These names were originally submitted in camera, but were later made part of the record both by the Senate Committee and in open court [Tr. 11676-86]. Throughout the brief, plaintiffs have made various references to in camera proceedings--but in each case the subject matter of the proceedings [i.e. documents, O'Neal's disappearance] has subsequently been made public and nothing still secret has been mentioned in the brief.

***The Director, in these intstructions, cited two primary examples of successful Bureau counterintelligence actions: 1) working with local Philadelphia police to get the leaders of the local RAM--a group similar in politics to the Black Panther Party--"arrested on every possible charge," and keeping them in jail for the summer; and 2) working with District of Columbia authorities to get a Nation of Islam school shut down because of alleged violations of regulations. Despite the obviously important and relevant nature of this evidence, the Court would not allow it in evidence. [Tr. 3818, 2837-9, 3820, 3814-15, 3819] See also: Tr. 5052-72 i.c., motion filed 2.24.76; Tr. 11676-96.

****The Racial Matters Squad was one of the Squads assigned to "security" matters within the Chicago office. It was purportedly established to investigate violations of federal law such as riot, insurrection, Smith Act, etc., but its main thrust was against the black movement. In fact during the entire period of this proceeding, no prosecutions were ever brought. [Tr. 6313].

JOHNSON, after consultation with Robert Stoetzal, Supervisor of his Racial Matters Squad, appointed Agent Joseph Stanley in late April 1968 to coordinate the program. After discussions with Agents Stanley and Stoetzal, JOHNSON wholeheartedly approved* the goals of the program in a letter to Director Hoover. [PL #3 and 4]**

B. BACKGROUND OF FRED HAMPTON

1. His Political Activities

FRED HAMPTON, during late 1967 and early 1968, was beginning to become a prime target of Defendant JOHNSON and the Chicago FBI. HAMPTON had graduated from high school and had become the youth leader of the NAACP in Maywood. Under his leadership, membership grew rapidly. [Tr. 29164] According to the former Mayor of Maywood, HAMPTON was well respected among the youth and concerned citizens of Maywood. He was the driving force behind a movement to build a municipal swimming pool (which was later constructed and named, posthumously, in his honor). He was a consultant to the Human Relations Commission, and was relied on by school officials to mediate between blacks and whites at Proviso East High School during a period when racial tensions in Maywood, as well as nationally, were quite high. [Tr. 32412-14, 32417-19;] Even then, he was concerned with police abuse and spoke out publicly against it, causing the police of Maywood to start a vendetta against him which later led to his arrest and conviction--under very questionable circumstances--for

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*JOHNSON's initials appeared on the document, in his writing, which, according to JOHNSON, meant that he read the document and approved of its contents. [Tr. 3915]

**JOHNSON claimed he had no recollection of these meetings, but conceded that they took place because such a notation, in his handwriting, was on the document. [Tr. 3921]

the robbery of $71.00 worth of ice cream.*

2. HAMPTON as a Target of the Racial Matters Squad

JOHNSON's Racial Matters Squad opened a file on HAMPTON in late 1967, a file that was to grow to 12 volumes and over 4000 pages in the two remaining years of his life. An FBI informant was planted in the Maywood NAACP organization who reported regularly to the FBI in Chicago. [PL #39, 71; SD #111-118] In February, 1968, Defendant JOHNSON approved a request to wiretap HAMPTON's mother's house, although the request was denied in Washington until 1969. [PL # 313, 111] In May, 1968, Defendant ROBERT PIPER, then relief supervisor of the Racial Matters Squad, was informed of HAMPTON's placement on the FBI's Agitator Index. [PL #69, Tr. 8985] Such a placement made him an explicit target of the counterintelligence program. [PL #1, 2] PIPER was further informed that HAMPTON was a "key militant leader" in Maywood, and he approved communications to FBI Headquarters in Washington informing them that HAMPTON was involved in Dr. King's Poor People's Campaign and was organizing rallies at which he and Stokely Carmichael spoke in Chicago and Maywood. [PL #69] In the fall of 1968, PIPER wrote to Illinois Bell to request the record of toll calls made from HAMPTON's mother's house of the months of June, July, and August. [PL #70]

C. THE BLACK PANTHER PARTY AS A TARGET OF THE COUNTERINTELLIGENCE PROGRAM

1. FBI's Interest in the Black Panther Party

In late April, 1968, Defendant JOHNSON determined that more attention

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*HAMPTON was arrested and charged numerous times from 1967-69, but this was his only conviction. Former Maywood Mayor Chabala testified that it was common knowledge that the key police officer witness had a vendetta against HAMPTON, and had pointed him out in a lineup to the complaining witness. He expressed doubts that justice had been done in the case. [Tr. 32429-30, 32450-1] Plaintiff SATCHEL also testified that HAMPTON had been "framed" and that someone else had admitted the robbery just prior to HAMPTON's death. [Tr.13912-3]

should be paid to counterintelligence programs directed against the black movement, and he directed that an additional agent be assigned to it. [PL #328]* During the latter half of 1968, as the Black Panther Party (BPP) began to gain national attention, the Bureau began to focus its attention on the BPP. In October of 1968, PIPER approved a counterintelligence memo to Washington which noted that the BPP was forming locally and that the Racial Matters Squad was following a developing rivalry between them and another black organization [PL #5] PIPER followed this with a November letter to Headquarters in which he stressed the importance of promoting division between the BPP and white groups by exacerbating the racial differences. [PL #338]

In late November 1968, the Bureau sent out explicit instructions to all its Special Agents in Charge--including Defendant JOHNSON--that the counterintelligence program was to focus on "crippling" and "destroying" the BPP. [PL #6]** Johnson and his Racial Matters Squad were instructed to propose hard-hitting proposals every two weeks. Special attention was drawn to Southern California where a black nationalist organization, United Slaves (US) was involved in an often violent rivalry with the BPP. Hoover personally ordered his agents to exploit that violence by all means, and within eight months four Los Angeles BPP members were dead. [D #15-38, BPP Papers]***, for which the FBI

*This was called for in a notation in JOHNSON's handwriting at the bottom of page 1.

**While these instructions used the words "neutralize, cripple, disrupt," etc., the clear intent was to destroy the Party and its leadership. One of the witnesses Plaintiffs had intended to call if their case had not been cut off was Arthur Jefferson, Staff Counsel to the Senate Select Committee on Intelligence (Church Committee), who had authored the section of the Committee's report entitled, "The FBI's Covert Plan to Destroy the BPP." Plaintiffs had intended to qualify Mr. Jefferson as an expert on the FBI counterintelligence program against the BPP, and elicit his opinion that the program was designed, in fact, to destroy the BPP and their leadership [See Statement of Arthur Jefferson, refused filing 6/8/77.]

***The Bureau considered itself the catalyst for these murders and distributed several memoranda of self-congratulations. [See PL #120-122 o.p.]

took no little credit. [PL #106]*

2. Counterintelligence Activities Against the Chicago BPP

a. BPP Chapter is Formed in Chicago. Within a week of the instruction to "cripple" the BPP, a local chapter officially formed in Chicago. Among the founding leaders were FRED HAMPTON, Bobby Rush and Robert Brown--the latter two formerly leaders in SNCC. HAMPTON was named Deputy Chairman, and Rush Deputy Minister of Defense. [Tr.21962-8]

The BPP nationally had been formed in Oakland in 1966 as a response to police harrassment and in order to deal with community problems in the ghetto. The Party was an historical progression from the struggles of the civil rights movement in the South to Northern urban areas. It adopted a slogan of "power to the people," which embodied their belief that poor and dispossessed black people should take control of their own lives. The BPP urged people to arm themselves and employ self-defense against the attacks of police and white racist organizations. They started a community newspaper and adopted a Ten Point Program. They started community programs such as free breakfast programs and free medical clinics. They developed a revolutionary political philosophy which embodied principles from such leaders as Malcolm X, Martin Luther King and Mao Tse Tung. It was this political philosophy and program that HAMPTON and Rush sought to implement in Chicago.**

*The Court denied admission of several additional counterintelligence documents from San Diego [PL #120-122, offer of proof] which set forth in detail the Bureau's program to exacerbate these tensions--and which took credit for contributing to the murders of several BPP members and to the "shootings, beatings, and high degree of unrest" in the ghetto of San Diego. [Tr. 11319-25] He also precluded Defendant PIPER from being questioned about it. [Tr. 11296, 11307-8] Nevertheless, through the Defendant's admission of the BPP papers and PL #6 and 106, the outlines were proven.

**See generally testimony of Elaine Brown [Tr. 28959-058] and Bobby Rush [Tr. 29162-234] for this history of the Black Panther Party See [PL#42 i.d.]

b. O'NEAL Infiltrates the BPP. In late 1968, FBI Agent ROY MITCHELL was assigned to the Racial Matters Squad. He then reestablished contact with an informant of his named WILLIAM O'NEAL, whom he first met in early 1968 during an investigation of O'NEAL's role in an auto theft. O'NEAL supplied MITCHELL with information as to others involved, and was never prosecuted for the offense. [Tr. 21741-62] Thereafter, MTCHELL established a paid informant relationship with O'NEAL. In mid-1968, O'NEAL had been arrested for impersonating a federal officer--manufacturing and possessing a phony FBI identification--but was spared prosecution by MITCHELL's intervention. [Tr. 21807-18]* The informant relationship had then lapsed, but was rejuvenated, with PIPER's approval** in late 1968, when MITCHELL requested that O'NEAL join the newly-forming Chicago BPP chapter. MITCHELL then carefully trained and indoctrinated O'NEAL in the principles and tactics of the counterintelligence program. [PL # 16, 17, WON #3; Tr. 6558-9, 6566] In keeping with his instructions, O'NEAL went to the Party office at 2350 West Madison on the day it opened, and joined the chapter. [Tr. 28321, 6210-23, 21820]***

c. JOHNSON Approves the "Hit Letter". O'NEAL went right to work. In December, 1968, he reported to MITCHELL that the BPP and the Blackstone Rangers had met to discuss a possible merger. [PL #138, Tr. 6510, 6531] He later reported that the merger had fallen through and there had been ultimatums issued by Ranger leader Jeff Fort to HAMPTON. [Tr. 22036-55; SD 118]

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*MITCHELL also posted $300 bond for him [PL WON #3]

**PIPER, still relief supervisor of the Racial Matters Squad, initialed the document in which MITCHELL re-established O'NEAL as an informant. [PL #323]

***MITCHELL did a background check on O'NEAL within a few days of his re-employment. He discovered "a couple of arrests" and at some point became aware that O'NEAL had been recommended for psychiatric examination while being held in jail/ [Tr. 6213-18]

With the express approval of JOHNSON (and the Bureau in Washington), an anonymous letter was sent to Fort by Racial Matters agents, claiming that the Panthers "have a hit for you." Bureau Headquarters, again with JOHNSON's approval, was informed that the purpose of this letter was to provoke Fort and the Rangers--whom they recognized to be extremely violent--into taking violent retaliatory action against the BPP and their leadership. [PL #8-12]

d. O'Neal Becomes Key Counterintelligence Operative. O'NEAL rose to a position of prominence in both the counterintelligence program and the BPP. He was appointed Chief of Security of the Chicago BPP Chapter, becoming both HAMPTON's bodyguard and the officer responsible for the security of BPP headquarters. According to MITCHELL, by February 1969, O'NEAL was third in command in the Chicago Chapter, and in line for a national office in the Party. [PL WON #3] As a result of MITCHELL's careful indoctrination, and with MITCHELL's and JOHNSON's approval, O'NEAL strove to exacerbate tension and violence by the Blackstone Rangers against the BPP [PL WON #3], helped MITCHELL set up HAMPTON's arrest at a television show to publicly humiliate him [PL #16-17], and falsely accused a Vice Lords gang leader of being an informant, which prevented the proposed merger of the two groups. [PL #16-17; Tr. 4113-4] MITCHELL and O'NEAL were lauded by the Bureau in Washington for these actions, and in late February MITCHELL sought--and JOHNSON approved--to have O'NEAL's payments raised,* based in large measure on his successful counterintelligence activities. This raise was approved by the Bureau on March 11, 1969. [PL #306]

e. O'Neal as Agent Provocateur. As Chief of Security, O'Neal continued to act the role of agent-provocateur. He devised a "security plan" for

*The request was to raise the maximum O'NEAL could receive per month to $450, plus $125 expenses. [PL WON #3]

the BPP offices which included nerve gas, electrocution and gas switches, and then supplied a copy of the plan to MITCHELL. [PL #44; Tr. 6487] In February. O'NEAL built an "electric chair" to scare people he labeled informants. [Tr. 29186-90, 28323] He also proposed to build an airplane or mortar that would deliver explosives to City Hall. [Tr. 29186-90, 28324-6]* O'NEAL also encouraged other Party members, especially his close associates Robert Bruce and Nathaniel Junior--to engage in criminal activities. In March of 1969, he attempted to get Bruce to participate in robberies and offered to train him in the art of burglary. [Tr. 28339-43]** In early March of 1969, O'NEAL's role in "impelling" criminal activities was approved by MARLIN JOHNSON as a counterintelligence tactic. [PL #19, p. 2]***

f. Piper Becomes Supervisor of Racial Matters Squad. In March of 1969, Defendant ROBERT PIPER replaced Stoetzal as supervisor of the Racial Matters Squad. His duties included direct supervision of the counterintelligence program, whose focal point continued to be the BPP. [PL #20, Tr. 8907] PIPER, like JOHNSON, noted his approval of O'NEAL's tactics in "impelling criminal activities." [PL #19]

In a plan approved by JOHNSON and PIPER, MITCHELL instructed O'NEAL to create a rift between Students for a Democratic Society (SDS) and the BPP. [PL #26-28, WON 5; Tr. 8907, 6579] And in another attempt to disrupt SDS-BPP relations, they approved racist cartoons which were publically distributed.

*O'NEAL admitted to being involved in these acts, but attempted to place the responsibility on HAMPTON and Rush. [Tr. 21896-907]

**Bruce testified that he declined the invitation and further that such burglaries and robberies were against BPP policy. [Tr. 28339, 28343]

***In the teeth of the dictionary definition of "impel," meaning to "drive forward" or "urge," JOHNSON testified that "impel" in this communication meant to "restrain." [Tr. 4277-83]

[PL #29, 30] Likewise, PIPER was aware of the coalition forming between the BPP, the Young Lords, a Puerto Rican political group, and the Young Patriots, another white political group, and was prepared to move to prevent this coalition. [PL #26]*

In early April, the BPP received a call from Robbins, Illinois, asking them to mediate a dispute between rival black groups. HAMPTON, Rush, SATCHEL, O'NEAL, Bruce and some other Party members went to Robbins and were ambushed apparently by members of the Blackstone Rangers. O'NEAL fired his weapon and later claimed to have commandeered a passing automobile at gunpoint to escape. [Tr. 28344-54] The next day, MITCHELL received instructions direct from Washington to further capitalize on this violence. [PL #304]

g. The FBI Wiretap on BPP Offices. In the spring of 1969, the Justice Department approved JOHNSON and PIPER's request for a warrantless wiretap of the BPP offices at 2350 W. Madison, and MITCHELL was informed of its existence. [PL #111; Tr. 9042] BPP calls were monitored and tapped daily by members of the Racial Matters Squad [Tr. 9043], including calls between HAMPTON and SATCHEL and their attorneys concerning legal matters.** PIPER was aware that these attorney calls were being monitored and had instructed his agents not to overhear any conversations between attorneys and clients or about attorney-client material, but he did nothing to stop them. [PL #9 ; Tr. 9083-92]

h. Johnson Leads FBI Raid on BPP Offices. In June of 1969, the FBI staged a raid at BPP offices, led by MARLIN JOHNSON. ROY MITCHELL, using

*They also approved and sent an anonymous letter which referred to BPP leaders as "queers," "sweethearts," and "sex perverts." [PL #13-15]

**PL #72-76 were summaries of the overheard calls. The Court refused to order production of the actual tapes of the conversation.

a floorplan of the offices which he got from O'NEAL, drew the layout on a blackboard for the raiders. [Tr. 4954-67, 6921-32, PL #43]* The raiders brought teargas and bullhorns, and agents phoned the office and told the Panthers to surrender, which they did, without a shot being fired. [Tr. 6921-32]** Although ostensibly looking for a fugitive (George Sams),*** by JOHNSON's own admission, the raid was, in effect, a counterintelligence activity. [PL #20] Posters, literature, money, financial records and voluminous lists of members and contributors, as well as numerous weapons, were seized in the search of the offices, which JOHNSON directly supervised. Several BPP members were arrested, but their charges were dropped a few days later. [PL #20, 115; D #97; Tr. 22106-12]

i. FBI Intensifies its Program Against the BPP. JOHNSON continued to receive instructions throughout 1969 from Hoover's office in Washington, calling for stepped-up surveillance and counterintelligence aimed at "neutralizing the BPP," "destroy[ing] what it stands for," and "eradicat[ing] its 'serve the people' programs." [PL #90] In May and June, 1969, JOHNSON received repeated instructions to his personal attention from Hoover calling specifically for destruction of the Breakfast for Children program, [PL #90, 106, 107] and informed PIPER and MITCHELL of this priority. [PL #90, 106, 107, 326]****

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*MITCHELL did not go on the raid, but rather monitored the wiretap while the raid was in progress. [Tr. 6921-32, 6533]

**The raid was conducted in the early morning, but after dawn.

***Sams was not arrested during the raid. There is strong indication that Sams may have been cooperating with the Bureau during this period, as in August of 1969 he gave a long statement to the FBI [PL #13], later testified against Bobby Seale in New Haven, and was placed under the Witness Protection Act by the government for possible testimony in the Hampton case.

****On at least one occasion, PIPER was called in by JOHNSON to discuss these instructions. [notation, PL # 106]

Special emphasis was to be given to smearing the program in the media. Likewise, JOHNSON instructed PIPER that the Racial Matters Squad was to utilize informants to steal BPP financial records, books, literature, mailing lists. tapes, films, and other material belonging to the Party and/or its members [PL #97],* and to step up Racial Matters activities directed against the BPP Liberation School, Political Education Classes [PL #102, 103], and the Party's newspaper. [PL #106]

j. MITCHELL and O'NEAL Continue to Implement the Counterintelligence Program. On the basis of his work, Defendant MITCHELL had gained much prominence as a key operative in the Bureau's plans to destroy the BPP. He had eight to ten informants who were in or reporting on the BPP, [Tr. 6330-2, 6377]** was fully aware of the goals of the counterintelligence program and that the BPP was its focal point. [Tr. 6508, 6523] He had received plaudits from the Bureau for O'NEAL's success in implementing the counterintelligence program, and their acknowledgement of O'NEAL's importance was reaffirmed by the regular approval of almost $600 a month for payment to O'NEAL.*** MITCHELL was spending the major part of his time on the BPP [Tr. 8917, 6417], becoming expert on BPP politics and activities [Tr. 6395-406], and receiving enough information from O'NEAL alone to fill six volumes with memos during 1969. Additionally he was consulted by other members of the Racial Matters Squad about their proposed counter-intelligence operations. [Tr.6520]

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*As early as January, 1969, O'NEAL had supplied MITCHELL with a key to BPP offices. [notation, PL #106]

**MITCHELL testified that he knew of only one other informant in the BPP outside his stable--that being an informant reporting to Racial Matters agent Herman Scott. The Bureau had 67 BPP members--informants nationally in mid-1969, and was very concerned with cultivating more. [See PL #130, offer of proof.]

***According the the Church Committee, average pay for an FBI informant was $100/month. [Staff Report Book III, p. 269]

During this time, O'NEAL continued his work as an agent-provocateur. He bullwhipped someone he branded an informant [Tr. 28828-32],* brought sophisticated explosives and shotguns to BPP fugitive Robert Bruce in Canada (the trip was financed by the FBI), and later harbored him at his father's home on the west side for several weeks. [Tr. 28369-71; WON #1, 9/25/69 entry]** O'NEAL was always armed [Tr. 28340], and had a carbine, two shotguns, and a .45 automatic while in the BPP. [Tr. 29954-7] In June he attempted to purchase three weapons, but was refused because he had lied under oath about his birthdate on his gun application. [Tr. 21979-80]*** He went to Milwaukee and bought a carbine and transported it back to Chicago [Tr. 239592,**** and took Party members to a farm in Michigan for target practice. [Tr. 28491] He advocated that Panther Jewel Cook carry a gun, although he was on parole. [Tr. 13306] He attempted one robbery in the presence of Bruce, and then appeared with the proceeds of other burglaries and robberies. [Tr. 28834-9] He preached violence and kamakaze tactics, including bombings,***** but his proposals were rejected by HAMPTON and other members of the Central Staff. [Tr. 14341-59] He was arrested

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*Another important tactic of the counterintelligence program was to falsely brand BPP members as informants. Instructions were received by the Defendants during 1969 encouraging placing of such "snitch jackets" [PL #320, 197, p. 3; see also PL #3, denied admission], and O'NEAL implemented them. [See PL #16, 17] He also circulated rumors that LOUIS TRUELOCK was an informant after the December raid. [Tr. 9/22/76 , o.p.]

**Bruce came to Chicago with the intention of turning himself in; O'NEAL repeatedly attempted to discourage him but he did surrender in early 1970. [Tr. 28394-6]

***MITCHELL was informed of this in June of 1969.

****O'NEAL later attempted to change this testimony. [Tr. 24160-3]

*****He also proposed blowing up an armory to Plaintiff LOUIS TRUELOCK. This was refused admission by the Court. [Tr. 15631-8, 15705-43, summary of testimony 9/ 2/76]

several times, including in April, 1969, for threatening the life of a woman. [PL 78-82] JOHNSON, PIPER and the Bureau were informed by MITCHELL of his arrest, and MITCHELL posted $1000 of his own money for O'NEAL's bond. [WON 2] O'NEAL attempted to transact a deal for drugs over the BPP telephone, which was duly recorded by the wiretap and reported to PIPER. [PL #305]* O'NEAL was to be paid according to the value of the information he supplied [Tr. 6325-6], and he regularly supplied false information concerning HAMPTON and others---such as threats to kill policemen and to blow up buildings. [Compare Tr. 28516-19 with FD #2]

D. LOCAL LAW ENFORCEMENT TARGETS THE BPP

1. The Special Prosecutions Unit: HANRAHAN's Political Police

At the same time that MITCHELL joined the Racial Matters Squad, EDWARD HANRAHAN was elected State's Attorney of Cook County. From 1964 until March, 1968, he had been United States Attorney for the Northern District of Illinois. As U.S. Attorney, he had developed a close relationship with MARLIN JOHNSON, and estimated that during this time he had 200 conversations with him. [Tr. 26911] In 1966, HANRAHAN hired Defendant RICHARD JALOVEC as an Assistant U.S. Attorney. [Tr. 26928] JALOVEC's direct supervisor was Robert Collins, who held the position of HANRAHAN's first assistant. During their tenure in the U.S. Attorney's office, both HANRAHAN and JALOVEC developed a working relationship with ROY MITCHELL. [PL #413, Tr. 26909]

In October, 1968, JALOVEC left the U.S. Attorney's Office to assist in HANRAHAN's election campaign for Cook County State's Attorney. [Tr. 26928] After the election, HANRAHAN appointed him chief of the Special Prosecutions Unit (SPU). [Tr. 26932] HANRAHAN began to "develop" the SPU in April, 1969, and to direct its focus towards the black community and street gangs. [Tr. 27001]

*The Court would not allow O'NEAL to be questioned about this conversation although he admitted that it was about narcotics. [Tr. 23115-30] The Court later admitted the document after O'Neal had left the stand, but refused to order production of the actual tape of the conversation.

It was said that 90% of the SPU's work was related to the black community. [Tr. 24943]

An important function of this Unit was to "sell the public" on the police and their role. [Tr. 27020] In June, 1969, HANRAHAN proclaimed a "war on gangs"* in the press, and he and JALOVEC moved to establish an elite police squadron under their direct command. [PL #413 (FGJ, pp. 88-9)]** While in previous administrations (and again after the December 4th raid) the State's Attorney's Police were under the command of a State's Attorney's investigator (and were used almost exclusively to serve subpoenas and locate missing witnesses in routine criminal cases), HANRAHAN and JALOVEC recruited nine police officers who would answer directly to JALOVEC as thier supervisor.*** HANRAHAN and JALOVEC personally screened, interviewed and selected many of the officers considered for the SPU--including GROTH, DAVIS and CARMODY. They examined their complete police department files, including thier disciplinary records [Tr. 24831-4, 26055; PL 409 (Dep. 187-208)], and thus they knew that DAVIS, as an extreme example, had more than 60 disciplinary (IID) complaints against him--many for brutality--including a civil settlement of damages to a black man, Ferrin Young, arising from

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*The Court would not allow questioning in this area [Tr. 24936-7], but see Chicago Sun-Times, 6/10/69. [Tr. 29672, 29687-9]

**Plaintiffs offered prior testimony of Defendant at the end of their case in chief as PL #401-428, each number containing the testimony of one Defendant. Within each PL # therefore, were excerpts from various prior proceedings--such as Federal Grand Jury (FGJ), Special State Grand Jury (SSGJ), etc. Citations to these exhibit numbers, therefore, will also contain a reference to the type of testimony and page--i.e., FGJ, pp. 88-89. As to JALOVEC, [PL #413], CARMODY, [PL # 402], MITCHELL [PL #422], HANRAHAN [PL #409], GROTH [PL #408], and JOHNSON [PL #42], the Court refused the offers entirely because they had previously testified. [Order of 4/4,5/77]

***HANRAHAN, in his trial testimony, attempted to make the JALOVEC-GROTH Unit look like a unit which was similar to those under former State's Attorneys, and no different than others under the command of another police investigator in the State's Attorney's Police. [Tr. 26951] His Grand Jury testimony [PL #409 (FGJ, pp. 62-3)] belies this, as he there stated that after the raid he returned the command of GROTH's unit to State's Attorney's Police Investigator Ward. Likewise, JALOVEC at trial attempted to say that GROTH's unit answered to a police officer for police functions and to him on legal matters, but his Grand Jury testimony totally exposes this fiction. [PL #413, (FGJ, 8809), offer of proof (o.p.)] In contrast, GROTH testified that JALOVEC was his direct supervisor on all matters, and that this was the only

(cont'd)

a brutality complaint.* They likewise knew, or should have known, of DAVIS' widespread reputation in the black community for violence and abuse. Bobby Rush and WILLIAM O'NEAL both said that DAVIS had a reputation for terrorizing people in the black community, [Tr. 23993-4, 29653]** and he was nicknamed "Gloves" because he was reputed to ritually put on black gloves before beating up people. Several of the other officers chosen for this unique special squad also had repeated misconduct complaints against them as policemen. [PL #580-594, o.p.]

Sgt. DANIEL GROTH, who had experience "working with federal agencies" [Tr. 25012] was selected as the direct subordinate to JALOVEC, and next in command of the Unit. GROTH had previously worked in the 12th District Tactical Unit, which had within its borders both BPP headquarters and 2337 W. Monroe, the location of the December 4th raid. [Tr. 24924] Also chosen were Defendants GEORGE JONES and JOHN CISZEWSKI, who had been in Gang Intelligence and had worked with GROTH in the 12th District [Tr. 24922]; Defendant EDWARD CARMODY, a youth officer; and DAVIS; together with Fred Howard,*** JOHN MARUSICH WILLIAM KELLY and PHILLIP JOSELH. DAVIS, JOSEPH, JONES and Howard were black men. The selection and assignment of these men was approved by Superintendent Conlisk; after selection they were "detailed"

***(cont'd) occasion in his career as a police officer that he had a State's Attorney in such a capacity. [Tr. 24945, 24966, 25241]

*The Court allowed Plaintiffs to establish that HANRAHAN and JALOVEC considered their police backgrounds, but would not allow any testimony or evidence concerning what the records showed. It even went so far as to prevent Plaintiffs from seeing the IID files at trial (although they had viewed them pretrial), and would not allow them to be made part of the record as an offer of proof. The IID disciplinary files are in the possession of the Defendants, marked as PL # 580-594, o.p. However, certain aspects of the disciplinary files are in the record, such as a listing of DAVIS' complaints. [See PL #579-80 o.p.]

**At trial, O'NEAL altered his statement to "terrorizing criminals." [Tr.23990-3]

***Howard was originally a Defendant, but died in 1971. He was dismissed as a Defendant in the beginning of the trial because process was no effected upon his estate.

to HANRAHAN and JALOVEC in the summer of 1969.*

While the initial SPU focused its attention on street gangs [Tr. 23942], it soon included the BPP among its investigative targets. [Tr. 24971] GROTH had had substantial contact with the BPP in the 12th District--covering demonstrations, reading their newspaper, becoming familiar with FRED HAMPTON, whom he sarcastically called "their illustrious leader." [Tr. 24925-30, 24974-86] In mid and late, 1969, GROTH received information about the BPP from his informants, informants of other men in the Unit, and from the Gang Intelligence Unit (GIU). [Tr. 24988-90]

JALOVEC took an active role in the investigative work of the SPU. He continued his relationship with ROY MITCHELL and got information about the BPP from him "on many occasions" throughout 1969. [Tr. 6871] MITCHELL called JALOVEC at home on several occasions with information concerning the BPP, [Tr. 24534] and testified that he understood that it was JALOVEC's function to gather data on the Illinois BPP. [PL #422 (SSGJ, pp. 4-5)]

MITCHELL had revealed to JALOVEC that O'NEAL was an FBI informant sometime after April, 1969, [PL #422 (Dep. pp. 286-7); Tr. 24832-44] and after December 4th, MITCHELL continued to supply JALOVEC with information about the BPP which came from O'NEAL--primarily information concerning the raid itself. [PL #422, (dep. pp. 405-6)]

JALOVEC gave GROTH almost all work assignments, and GROTH never did anything without JALOVEC's knowledge. JALOVEC always knew what every officer in the Unit was doing: they reported to him by memo (PL # 413 (FGJ, pp. 88-9), o.p.] and he authorized payments to their informants. Prior to the raid, an IID disciplinary complaint was made against GROTH, DAVIS, JONES and CISZEWSKI for misconduct while on an SPU weapons raid. JALOVEC assisted in the investigation of this complaint. [PL # 580-94, o.p.]

*In addition to these nine men, another nine were detached from the CPD to the SAO. These included Defendants GORMAN, HUGHES, HARRIS, CORBETT and BRODERICK, and they reported directly to Sgt. Carney. [Tr. 24936] Otherwise, there were over 100 regular State's Attorney's police who reported directly to Investigator Charles Ward.

2. The Climate of Hostility Between the BPP and the Police

Serious tension between the BPP and the Chicago Police had been building throughout 1969, especially during the summer. Confrontations between the police and the BPP had taken place on July 16 and 31, 1969. One Party member, Larry Roberson, was seriously wounded on July 16th and died a few weeks later in Cook County Hospital. Six other Panthers were arrested. [D #108, Tr. 13931-5, SD #15-38] In early October, 1969, the Vice Lords street gang fired into the BPP offices, and the Panthers fired back. The police ther arrived, fired into the offices, and some Panthers were arrested. On July 31 and October 3, the BPP offices were ransacked by police--typewriters smashed, the office set on fire, newspapers and food for the breakfast program and supplies for the health clinic destroyed, and the arrestees beaten. [Tr. 28990, SD 15-38, 8392-401] Afterwards, O'NEAL supplied MITCHELL with information concerning these confrontations, [Tr. 6783-7] which was widely sensationalized by the news media. PIPER and JOHNSON were equally aware of the tension, as well as the police's use of counterintelligence tactics of their own to harass and disrupt the BPP. [See PL WON 8, initials; PL #118, #81-2; D #109;] Additionally, HAMPTON and the BPP were energetically organizing opposition and protest on the West Side to what they termed the police murders of the Soto brothers,* and, in late October, had succeeded in getting hearings, at which HAMPTON testified, before members of the Illinois state legislature. [tr. 29258-9, 686 o.p.]

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*John and Michael Soto were two brothers from the West Side of Chicago who were killed by the police in the fall of 1969---one while he was home on leave from Vietnam to attend the funeral of the other. These brothers were two of eleven Black youth who the BPP said were murdered by the police in Chicago's Black community during 1969. [Tr. 3/14/77]

3. The Rise of FRED HAMPTON as a BPP Leader

The Black Panther Party grew steadily during the first half of 1969, and FRED HAMPTON emerged as the key leader and spokesperson for the chapter in Chicago. Barely 20 years old when the chapter started, he now began to speak in public almost every day, raising money for the Party and spreading its political message. He addressed the major youth gangs in the black community--the Blackstone Rangers, the Disciples. and the Conservative Vice Lords--encouraging them to stop victimizing other blacks and to join in a coalition with the BPP. The Party formed relations with white and Puerto Rican political organizations, including the Young Lords, Young Patriots and SDS. O'NEAL, as HAMPTON's bodyguard, reported on his activities almost daily. In April, 1969, PIPER informed JOHNSON that he had discussed with MITCHELL and other agents both an IRS investigation of HAMPTON and the monitoring of his bank accounts, [PL #95] and urged agents on his squad to give highest priority to developing more informants within the BPP. [PL #95]

In May, 1969, HAMPTON was sent to prison.* PIPER identified HAMPTON as a "top black leader" and requested added informant coverage after O'NEAL informed MITCHELL that HAMPTON kept the Party alive and growing through his leadership, and that the chapter was faltering without him. [PL #46, 96] The Racial Matters Squad, through the cooperation of the Illinois Department of Public Safety, obtained copies of letters sent between HAMPTON, his lawyers, family, and Plaintiff JOHNSON while he was in prison. [PL # 93A]**

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*Defendant HANRAHAN's office had prosecuted him on this robbery, obtained a 2-5 year sentence, and successfully opposed appeal bond on the grounds that HAMPTON professed being a revolutionary.

**The Court erroneously refused admission of these letters which had been wrongfully intercepted by the State of Illinois and which were transmitted to the Racial Matters Squad while under the control of Defendants JOHNSON and PIPER. [PL #93A, o.p.; Tr. 10389-409]

HAMPTON was released on appeal bond in August, 1969, [PL #47, 48]* and immediately spoke to an overflow crowd at a large church on Ashland Avenue. While people clapped, sang, cheered and rejoiced at his freedom [WON 10-11, Tr. 22342-50, 23939-43], he displayed the leadership and speaking ability which Bobby Rush likened to Martin Luther King, Stokely Carmichael and other "messiahs" of the black liberation struggle. [Tr. 29202-3]**

HAMPTON continued in his total commitment to the BPP after his release, speaking constantly, often about police abuse, self-defense, the prosecution of Bobby Seale, the Vietnam War, and the necessity of revolution both here and abroad. [PL #138, WON 10, 11 (videotape)] He proclaimed himself a revolutionary [WON #10, 11] and exhorted and inspired others to follow his dedication to the people. [Tr. 14035-39] With his release from prison, HAMPTON's activities were followed even more closely. Speeches he made at Southern Illinois University, Illinois State and Northern Illinois University were reported back to MITCHELL, PIPER and JOHNSON by O'NEAL. [PL #51, 55]***

As the Chicago 8 trial continued, HAMPTON organized weekly demonstrations at the Federal Building protesting government treatment of Bobby Seale [WON 9] and met with New Mobilization leaders who were planning a massive demonstration in Washington on November 15. He worked with Minister of Health RONALD SATCHEL organizing the Free Health Clinic, and attended the Breakfast for Children program at 6 a.m. almost every day. He worked on organizing a program for community control of police, and for an investigation of the police murders of

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*MITCHELL, with JOHNSON and PIPER's approval, quickly notified the Bureau of his release.

**Even O'NEAL praised HAMPTON as a charismatic and intelligent leader whom he respected. [Tr. 24017-18]

***Additionally PIPER received instructions to use concealed devices to record these speeches, and on at least one occasion HAMPTON's speech was so recorded by Bureau agents. [PL # 68. 77. 93. 9, 109]

the Soto brothers on the West Side. [Tr. 29002-4, 29680-7, o.p.]

HAMPTON journeyed to California in early November, and spoke movingly before a crowd of 300 law students at UCLA about the necessity of blacks and whites working together. [Tr. 28911-15] While on the West Coast, he met with BPP national leadership and was told that they wanted to appoint him to the national Central Committee of the BPP and have him serve as its chief spokesperson. [Tr. 29037-8, 29183-4] Chicago was among the strongest BPP chapters in the country, and had one of the largest and most vibrant "serve the people" programs. [Tr. 29030-8] O'NEAL reported all these activities to the other FBI defendants, including HAMPTON's imminent ascendancy to a position of national leadership. [PL #50-51, 53, 55; Tr. 6682-705, 6212-15]

4. HAMPTON and JOHNSON Move into 2337 West Monroe

In early October, 1969, FRED HAMPTON and DEBORAH JOHNSON, who was pregnant with their child, leased a cramped 4 and 1/2 room apartment at 2337 W. Monroe Street, in the heart of the black ghetto on Chicago's near West Side. As they moved in, O'NEAL reported the rental name used--Fred Johnson, the phone number, and also reported that, after the October 3rd confrontation at the BPP office, a quantity of weapons had also been moved to the apartment. [Tr. 22433-40]** Other local BPP leaders, including DOC SATCHEL, Bobby Rush, and Billy Brooks, often spent the night there, as did other Party members; but the apartment was basically FRED and DEBORAH's home. [Tr. 28985] This too was reported by O'NEAL to MITCHELL, who told PIPER. [Tr. 9244-51; PL #49, 22, 308]

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*O'NEAL reported to MITCHELL that HAMPTON was to take over David Hilliard's position as Chief of Staff, which, with Huey Newton and Bobby Seale in jail and Eldridge Cleaver in exile, was the highest command position in the Party.

**Deposition of O'NEAL read into evidence.

II. THE DEFENDANTS PLAN THE RAID

A. MITCHELL AND O'NEAL OBTAIN THE FLOORPLAN OF HAMPTON'S APARTMENT

On November 13, 1969, in the early morning hours, two Chicago police officers, Rappaport and Gilhouly, and one former BPP member, Jake Winters,* were killed in a shootout on the south side of Chicago. [PL #60] MITCHELL met with O'NEAL that evening. [Tr. 8177-206] During this conversation, they discussed the police killings and MITCHELL showed O'NEAL gruesome pictures of the dead police officers.** O'NEAL then informed MITCHELL that HAMPTON was leaving for speaking engagements in Carbondale and Canada for a few days and would return by the 23rd. [PL #55, 56; Tr. 6736] Before he left, however, HAMPTON publicly eulogized Jake Winters as a fallen comrade. [WON 10-11]

On November, 19th, O'NEAL reported to MITCHELL detailed information concerning the layout of HAMPTON's apartment.*** O'NEAL acknowledged that the sole purpose of such a floorplan was for use in a raid, [Tr. 22841-2] and MITCHELL admitted that this was his reason for obtaining it. [PL #422, (Dep., pp. 234-5)] O'NEAL met with MITCHELL at the Golden Torch Restaurant in downtown Chicago, where they made a complete floorplan of HAMPTON's apartment, including the layout of the rooms, the doors, the placement of furniture, the bedroom, and an identification of the bed in which HAMPTON and JOHNSON slept, as well as the position of the windows in his bedroom. [PL #21; Tr. 6910-50] [See Figure 2-A]

Although O'NEAL originally testified that he gave MITCHELL no new infor-

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*There was conflicting testimony as to whether Winters was a BPP member or had been expelled before the incident. O'NEAL and all the Plaintiffs queried except ANDERSON said that he was not a member, and O'NEAL likewise repeated to MITCHELL that he was no longer a member well before November 13, 1969. [D #89]

**PIPER testified that he was also aware of this confrontation. [Tr. 9226-35]

***Neither O'NEAL nor MITCHELL would admit to originating the idea for this floorplan, [PL # 422, dep., o.p. 228-9, o.p.] but see MITCHELL's deposition.

mation about guns at 2337 W. Monroe during this time period,* MITCHELL compiled a list of weapons which O'NEAL said were at the apartment, and reduced it to a memorandum dated November 21, 1969. [Tr. 22433-6, 22440; PL #21]**

B. THE FBI ATTEMPTS TO INDUCE THE GIU TO RAID THE APARTMENT

On November 19th, MITCHELL met with officers (one of whom was Walter Bisewski) of the Chicago Police Department's Gang Intelligence Unit (GIU) assigned to BPP matters, and gave them the information contained in the floorplan. [PL # 21; Tr. 6844] He told them that there was a large quantity of weapon at 2337 W. Monroe and that HAMPTON, JOHNSON, and several other Panthers, including Plaintiffs RONALD SATCHELL and LOUIS TRUELOCK, lived there. He also claimed to have told them of a sawed-off shotgun and stolen police gun, although he never mentioned these weapons in writing until eight days after the raid. [PL 23, see infra] MITCHELL knew that the GIU planned to raid the apartment on the 24th or 25th of November. [Tr.6988-9]

On or about November 21, 1969, ROBERT PIPER was informed of the contents of PL #21 and 22--that a large amount of weapons were located at 2337 W. Monroe, that HAMPTON and others resided at the apartment, and that the weapons were legally purchased. He was also informed that MITCHELL had met with O'NEAL and had sketched a detailed floorplan of 2337 W. Monroe--as the weapons memo [PL #22] and the floorplan [PL # 21] were routed to him and routed back to MITCHELL by PIPER. [Tr. 9708-11] He also knew that MITCHELL had given the floorplan and weapons

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*O'NEAL further said that the same weapons had been there since early October, "gathering dust," and that MITCHELL was not particularly interested in them. [Tr. 22440]

**MITCHELL testified that at their meeting to draw the floorplan on the 19th, O'NEAL told him for the first time of a large number of weapons at 2337, including a sawed-off shotgun and a stolen police riot shotgun. [Tr. 6824] His memo of November 21st made no mention of these two federally illegal weapons. [PL # 22] O'NEAL at trial (and at his second deposition) then changed his testimony to conform with MITCHELL's version [Tr. 22429-32]

information to the GIU of the Police Intelligence Division. PIPER approved of these actions by MITCHELL [Tr. 9302] and recognized both its importance and its main purpose---as an invaluable aid in any raid of the apartment. [Tr. 9300, 3079]

C. PIPER MEETS WITH JOHNSON

PIPER, then, most likely on the same date--knowing that MITCHELL had said that 2337 W. Monroe was of great interest because HAMPTON lived there--met with Defendant JOHNSON. [Tr. 9244, o.p.; 9402-3] He told JOHNSON of the contents of PL #22--which included a listing of the weapons at 2337 W. Monroe, information that HAMPTON, Plaintiff JOHNSON, and others frequented the apartment, and that the information had been supplied to the CPD and HANRAHAN's office. [Tr. 9339-40, 9422-3] He told JOHNSON because JOHNSON was his superior and therefore vitally interested in BPP activities, had discussed HAMPTON with him on several occasions, and because he believed that the information should be brought to JOHNSON's attention. [Tr. 9346, 9348] He could not recall whether he discussed the floorplan with Johnson, although the floorplan was attached by MITCHELL to a memo directed to SAC Chicago. [PL #21, Tr. 9347]* MITCHELL made no copies of this document and routed the original to O'NEAL's confidential file, to which only MITCHELL, PIPER and JOHNSON had access. [Tr. 6927-9, 9291-2]** Likewise he did not recall whether he told JOHNSON that there was a sawed-off shotgun or stolen police gun in the apartment.*** [Tr. 9347, 9356]

D. THE GIU RAID IS CANCELLED

Shortly after this meeting with JOHNSON, PIPER learned that the GIU might

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*The Court below erroneously refused to admit the PIPER deposition testimony concerning MITCHELL's "great interest" in 2337 W. Monroe.

**Normally at least one copy of the document would be made and sent to the BPP file. In comparison, eleven copies of the weapons memo [PL #22] were made.

***JOHNSON denies that he knew of these shotguns or the floorplan.

be planning a raid. MITCHELL informed him of this information, as well as as information allegedly from O'NEAL that the BPP was expecting a raid and was moving guns out of the apartment.* PIPER relayed this information to JOHNSON, and JOHNSON ordered PIPER to inform the agencies who had previously received information from MITCHELL concerning 2337 W. Monroe (i.e., the SPU of the SAO, and the GIU) of this new information. [Tr. 9422-3] PIPER then informed MITCHELL, and MITCHELL called Biszewski of the GIU [tr. 7924] On November 24th, in PIPER's presence, JOHNSON called Thomas Lyons, director of the GIU, and confirmed that Lyons had a raid planned. JOHNSON claimed that he told Lyons that the BPP was expecting a raid and that Lyons informed him that he would cancel his raid. [Tr. 5026, 5032] JOHNSON said that he made this call because of the nature of the information, because Lyons might "visit the apartment," and because "time was of the essence." [Tr. 5027] JOHNSON admitted that such a call was unusual** and did not recall any other occasion in 1969 where he had called Lyons. [Tr. 5028-31]

E. THE FBI AND SPU PLAN THE RAID

1. MITCHELL Calls JALOVEC

Within two days after the cancellation of the GIU raid, MITCHELL called JALOVEC; and from late November until December 4, 1969, he had five to seven conversations with him. [Tr. 6875] He told JALOVEC that the apartment was leased in the name of DEBORAH JOHNSON and in HAMPTON's name--under the alias of Fred Johnson. [Tr. 24592-3] He told him that DEBORAH JOHNSON was living with HAMPTON and pregnant by him, and that HAMPTON was spending some nights at 2337 W. Monroe. [Tr. 24398-9] He told JALOVEC that there were riot shotguns at the apartment,

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*O'NEAL flatly contradicted this in his first deposition, which was read into evidence. [Tr. 22433-6, 22440]

**The Court erroneously struck this evidence, which was read from his deposition. [tr. 5028-31]

which JALOVEC erroneously equated with illegal sawed-off shotguns.* MITCHELL told JALOVEC that the GIU raid had been cancelled. [PL #422 (Dep. p. 274), o.p.] He told JALOVEC who frequented the apartment--including HAMPTON, JOHNSON, and TRUELOCK; and gave a listing of the weapons allegedly there--all legally purchased. [See PL #22] He told JALOVEC that the weapons which were the subject of the aborted GIU raid had been moved back into 2337 W. Monroe. He further told JALOVEC that HAMPTON and Rush had expelled all other Party members and that they would have to earn their membership by working in the Party's programs. [PL #57] During this conversation, he informed the SAO that HAMPTON had held meetings on the 22nd and 23rd, thereby informing them that HAMPTON had returned from Canada.

On November 26, MITCHELL learned that HAMPTON's appeal had been denied, and that he would be ordered to return to jail soon. [PL #58] MITCHELL made PIPER and JOHNSON aware of this denial by memo, which they approved and sent to FBI Headquarters in Washington. [PL #58]

On December 1 or 2, MITCHELL purportedly told JALOVEC for the first time that a sawed-off shotgun and stolen police shotgun were at the apartment. PIPER, on either December 1 or 2, called GIU Director Lyons and told him that the BPP was still expecting a raid. [Tr. 9430] Lyons assured PIPER that he was not planning a raid.

2. MITCHELL Meets With GROTH and JALOVEC and Supplies the Floorplan

Shortly after these calls, MITCHELL met with GROTH and JALOVEC at the SAO [PL #412 (Dep. p. 301), Tr. 7002]** and showed them the floorplan of the apartment at 2337 W. Monroe. MITCHELL said later that he could not remember

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*PL #412 (FGJ, PP. 27-9) erroneously refused into evidence as a prior admission because JALOVEC had testified in person. On the stand, JALOVEC testified that MITCHELL had said sawed-off shotguns in addition to riot shotguns. [Tr. 24403]

**All portions of MITCHELL's deposition was erroneously denied admission on the grounds that he had testified in person.

whether he pointed out the bed where HAMPTON slept, but acknowledged that he wouldn't have needed to if it were on the sketch. [PL #412 (Dep. pp. 307-8, 310)] In the same vein, he further admitted that the placement of furniture would be invaluable to someone planning a raid. [PL #413 (Dep., pp. 234, 305); PL #413, (Dep. p. 234)]* He discussed with GROTH and JALOVEC the fact that the Party had political education classes on Monday, Wednesday and Friday evenings--so that no, or very few, occupants would be present on the evening of Wednesday, December 3. [PL #413 (Dep., pp. 306-7)]** He further discussed with GROTH and JALOVEC-- he does not remember whether at this meeting or after the raid--the FBI tactics of implementing the June 4th raid, such as the use of sound equipment and the tactics of telephoning the occupants and surrounding the apartment. [PL #413 (Dep. pp. 325-6)] Although PIPER had no recollection of this meeting, he approved of the furnishing of the floorplan to the SAO well in advance of this meeting, [PL #21, Tr. 9302, 9708-11, 9281] and was aware that MITCHELL was meeting with the SAO. [Tr. 9502] During this time, MITCHELL stated that he had discussed a federal raid with PIPER. [Tr. 7017]

3. GROTH Talks With His Purported Informant

GROTH does not recall this meeting [Tr. 25109], and instead tells of a call at 10:30 p.m. on December 2, from a still unidentified informant.*** who had supposedly first contacted him about 2337 W. Monroe two weeks before (approximately the same time MITCHELL talked to an "unidentified" person at the

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*The floorplan itself, authored by MITCHELL, states that the entire document was provided to HANRAHAN's office. [PL #21] At trial, he attempted to minimize the floorplan meeting, stating that GROTH and JALOVEC weren't very interested in it. [Tr. 7002-5]

**Likewise, at trial MITCHELL attempted to back off his testimony concerning political education classes [Tr. 7024-6], but see PL #61, 63, 94, 103.

***GROTH first stated that the informant called at 10:30 p.m. [EVH #2], later changed it to evening, then changed it to late afternoon or early evening. [Tr. 25148-54]

SAO).* GROTH said that the informer told him on December 2nd about a confrontation between the BPP and the police on the south side that morning (after which HAMPTON had allegedly issued an edict that Panthers who did not fire back at police would not be bonded out of jail), [Tr. 25068-78] and asked GROTH when he was going to "move on the crib." GROTH said he replied that he would move when he was convinced that weapons were at the apartment. [Tr. 25068-75] The purported informant then told GROTH that there were numerous weapons at the apartment, including sawed off shotguns and stolen police shotguns [Tr. 25141] and a .45 pistol that HAMPTON supposedly kept by his bed. He also told GROTH that HAMPTON, JOHNSON, [Tr. 25084] and LOUIS TRUELOCK [Tr. 25085] "frequented" the apartment. GROTH also stated that the informant described the layout of the apartment, and GROTH rough-sketched it on a yellow pad. [Tr. 25403] GROTH stated that the informant told him that Wednesday evening, December 3, would be a "good time to move on the crib," [Tr. 25126-30]** since everyone would be at a political education class at a church a mile away from the apartment. [Tr. 25126-30] GROTH claimed that this informant was a member of the Black Panther Party, but could recall no information supplied by him prior to November, 1969. [Tr. 25157-63]*** He said that the informant was not paid, but performed in order to "advance himself in other areas." [Tr. 25308-10]****

4. MITCHELL Calls JALOVEC At Home on the Evening of December 2

JALOVEC likewise failed to recall any meeting with MITCHELL at which

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*During the first call, the alleged informant had told GROTH that there were weapons at 2337 W. Monroe, and that HAMPTON, JOHNSON and others frequented the apartment. GROTH did not recall any mention of illegal weapons, such as a stolen police shotgun or sawed-off shotguns.

**GROTH did not recall at trial that the informant had so stated, but did at deposition which was read to the jury.

***The Court would not allow questions directed at the length of time the informant had been a member or whether his main duties concerned the Blackstone Rangers--questions which attempted to impeach the existence of the informant.

****The Court would not allow further probing into this relationship.

GROTH was present. [Tr. 24405-7] He claims, however, that he received a call at home from MITCHELL at 10 p.m. on the evening of December 2, at which time MITCHELL recounted much of the information that MITCHELL stated he conveyed to JALOVEC; [Tr. 24406] except, he claims, that MITCHELL told him of riot shotguns and stolen police guns,* rather than, as MITCHELL states, a sawed-off shotgun and police shotgun. [Tr. 24403]

F. THE STATE DEFENDANTS DEVELOP AND FINALIZE THE RAID PLAN

1. GROTH and JALOVEC Meet

GROTH stated that he did not discuss the information from his purported informant with anyone on the 2nd. He reconnoitered the building at 2337 W. Monroe on his way to the SAO on the morning of December 3, 1969. [Tr. 25144-7] At the office, he sought out JALOVEC and relayed to him the entire substance of his conversation with his purported informant. [Tr. 25164-6] GROTH said that he told JALOVEC of the confrontation the day before, and JALOVEC replied that he was already looking into it. [Tr. 25164] GROTH also informed JALOVEC that he had surveilled the premises, [Tr. 26165] that HAMPTON, TRUELOCK and JOHNSON "frequented" the apartment, and that HAMPTON had a .45 pistol in the apartment. They discussed the layout of the apartment [Tr. 25169-70] and that the Party had political education classes on Wednesdays at 8:00 p.m. [Tr. 25175-6] JALOVEC stated that he had gotten the same or similar information from ROY MITCHELL, who had gotten it from an informant. They discussed an 8:00 p.m. raid time. [Tr. 25174-5]

2. KELLY and DAVIS Surveil the Apartment

GROTH left this meeting and spoke with several of his men, including Defendants DAVIS and KELLY, whom he sent to further surveil 2337 W. Monroe. KELLY and DAVIS surveilled the premises for 30-45 minutes and prepared a street diagram of the block in which 2337 W. Monroe was located when they returned to the SAO in the late morning. [PL #405 (Coroner's Inquest (CI), p. 2040]

* Of course, JALOVEC made no mention of these in his FGJ testimony (supra).

[See PL #DG # 6 for plat] GROTH then told DAVIS and several other of the men that they were going on a raid at 8 p.m. that night. DAVIS and one or two officers left, with instructions to report back at 7:30 or 8:00 that evening. [PL #405 (CI, pp. 2040-2)]*

3. Noon Meeting of HANRAHAN, JALOVEC and GROTH

JALOVEC decided to see HANRAHAN, and GROTH went with him--this being just before or just after lunch on December 3.** At this meeting, both JALOVEC and GROTH recounted the information that they had purportedly received from their "informants." [Tr. 25182] JALOVEC told HANRAHAN that they were going to get a search warrant for a Black Panther apartment, and GROTH informed him that HAMPTON frequented it. [Tr. 25183] GROTH further told HANRAHAN that HAMPTON had a .45 in the apartment. [Tr. 25186-7] He may have discussed political education classes with HANRAHAN. He had his notes and his "rough sketch" of the interior of the apartment at this meeting. GROTH said that he left this meeting with the distinct impression, as a subordinate, that HANRAHAN approved of the raid. [Tr. 25241--6]***

4. JALOVEC and GROTH Draft the Search Warrant

After this meeting with HANRAHAN, JALOVEC and GROTH sat down and drafted the search warrant. [Tr. 25238] GROTH said that he did not want to refer to MITCHELL's information at all, but JALOVEC decided to put the information in the warrant but not to mention MITCHELL's name in order "not to get

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*DAVIS received a call at home from GROTH and was told that the raid was changed from 8:00 to 4:00 a.m. GROTH confirms this story in his exclusive story to the Tribune, saying that they originally planned to "hit the place" at 8:00 p.m. [PL #DG #5], but he backed off from this at trial, saying that he never considered the 8:00 p.m. time. [DG #5, later admitted as EVH #2]

**At trial, GROTH said "after lunch," and the Court erroneously refused to allow reading of GROTH's deposition, pp. 283-4. [Tr. 25180-86]

***The Court erroneously excluded this testimony. See offer of proof, GROTH deposition, pp. 290-1. [Tr. 25189-94]

MITCHELL involved." [Tr. 24570, 25278] JALOVEC drafted the affidavit and the warrant with GROTH's assistance. [Tr. 25286-7] The affidavit recited that JALOVEC had received information from a "reliable informant" that "sawed-off shotguns and other weapons were being stored in the first floor apartment at 2337 W. Monroe Street." It further stated that GROTH had received information from a "reliable informant"* who had been in the apartment on December 1, 1969, and had observed numerous weapons including three sawed-off shotguns** and numerous rounds of ammunition. Both GROTH and JALOVEC "forgot" to make any mention of the "stolen" Chicago police shotguns that they both had allegedly been informed about. [Tr. 253C4, 7034] The warrant and affidavit were shown to HANRAHAN before it was taken to a judge. [Tr. 27193-4]*** GROTH swore to the warrant and it was presented to Circuit Court Judge Robert Collins, formerly HANRAHAN's First Assistant U.S. Attorney (and the man who hired and supervised JALOVEC when he was in the U.S. Attorney's office). [Tr. 24410-11] The warrant was issued by Judge Collins late in the afternoon of December 3rd.

5. JALOVEC and GROTH Make Final Raid Plans

a. Machine Gun Obtained. During the afternoon of December 3, 1969, GROTH and JALOVEC continued to make arrangements for the impending raid. GROTH went to men in the unit and explained the raid to them, with JALOVEC "more than likely present." [Tr. 25391] JALOVEC went to Lt. Delaney to get permission for the issuance of certain weapons to be carried on the

*"...who had supplied reliable information to affiant on several past occasions which had led to the confiscation of two sawed-off shotguns in two separate raids and has provided information that has led to several convictions. [SD119]

**Barrel length approximately 12 inches

***At trial, HANRAHAN did not remember whether he saw the warrant before or after it was signed. However, his deposition was read to the jury and indicated that he saw the warrant before its signing. Likewise, JALOVEC had the same problem, but his deposition also states that the warrant was shown HANRAHAN before the issuance. [Tr. 24478-81] GROTH confirms that he and JALOVEC showed the warrant to HANRAHAN. [Tr. 25199]

raid. [PL #413 (Dep., pp. 244-7), o.p.] Among the weapons discussed by JALOVEC was a machine gun. [PL #452] After this discussion, JALOVEC "assumed" that a machine gun would be taken on the raid. GROTH approved of the taking of a machine gun, although he had never taken one on a previous raid, even to seize "warehouses" of weapons from street gangs. [Tr. 25383-4. 25389] They decided to take 14 men, although JALOVEC suggested 50, and even though GROTH had never taken more than eight on any previous raid. [Tr. 25384] JALOVEC spoke with Officer Cagney to obtain permission for the six men not under his (and GROTH's) command to go on the raid. [PL #413 (dep., 244); Tr. 23612-6] JALOVEC was informed that a telephone truck would be among the vehicles taken by the Defendants on the raid. [PL #412 (dep., pp. 248-250)]

b. Early Morning Raid Time Agreed Upon. GROTH told JALOVEC how he was going to deploy his men at the apartment, and told him that he wanted to raid at 5:00 a.m. [PL #413 (FGJ, pp. 37-8)] JALOVEC approved "wholeheartedly"* of the 5:00 a.m. time [Tr. 24527] desired by GROTH, so as to surprise the occupants while they were asleep. [Tr. 25437, 25448-9] Although the possibility of violence was one of the factors JALOVEC said he was considering in planning the raid [Tr. 24529], at no time did either JALOVEC or GROTH discuss whether teargas and sound equipment should be taken, or means short of forced entry used. [Tr. 25618]

6. HANRAHAN Approves Final Plans

On December 3, 1969, HANRAHAN also learned from JALOVEC and/or GROTH that the weapons had been moved out of 2337 W. Monroe, but were now back. [Tr. 27256-8, 27261-2] HANRAHAN was told that there were sawed-off shotguns at the apartment, and that the police department had planned a raid. He was

*At trial, JALOVEC attempted to water this down, stating that he acquiesced in this timing. [Tr. 24507-8]

also aware, "at least inferentially" that this was the last time that his office would be offered this information to base a raid upon. [Tr. 27256-8, 27261-2]*

HANRAHAN said that he was extremely concerned with the "anti-police propaganda that was being circulated by the Panthers." He also spoke about the two police officers who had been killed by alleged Black Panthers the previous month, [Tr. 27028, 27042-6] and was aware that two of the men who were to go on the raid had been personal friends of the dead officers. [Tr. 27042-6]** He was quite aware of HAMPTON's leadership abilities and of his primary role in spreading "anti-police propaganda" as he read the BPP newspaper and listened to their public statements. [Tr. 27069-72] All of these factors were "on his mind" when he met with JALOVEC during the late afternoon of December 3, and discussed the impending raid. [Tr. 27060] In fact, one of HANRAHAN's main reasons in approving the raid, by his own admission, was to combat the anti-police propaganda of the BPP. [Tr. 27028] JALOVEC informed him that GROTH was leading the raiding party, that GROTH had surveilled the premises, and that 12--14 men were going. [Tr. 24492] He and JALOVEC did not discuss the use of tear gas or sound equipment; rather HANRAHAN simply told JALOVEC to tell the raiders to "be careful." [Tr. 24529]***

JALOVEC returned from this meeting and conveyed HANRAHAN's words to GROTH. He and GROTH agreed to have the weapons brought back to 26th and California to the SAO. [PL #413 (Dep. p. 243)]**** JALOVEC told GROTH to call him at home after the raid, [Tr. 24623] and then went home for the evening.

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*"I did know, in sum, that the CPD had not made the search and apparently was not going to make the search, and that, inferentially, that kind of information would not be relayed again." [Tr. 27262]

**At trial, HANRAHAN said that he learned of this relationship after December 4. However, his prior testimony, read at trial, at least implies that he knew this on or before December 3, 1969. [See Tr. 27042-6]

***HANRAHAN also remarked that the apartment was in his old neighborhood. [24530-1]

****JALOVEC sets the time of his discussion with GROTH at "about 5 p.m." [PL # 412 (dep., pp. 244-7; FGJ. p. 37)] or at between 5-6 p.m. [Tr; 24610]

7. JOHNSON and PIPER Approve the Raid as a Counterintelligence Operation.

On the same day, December 3, 1969, Defendants JOHNSON and PIPER approved a counterintelligence communication informing the Director in Washington that the police* planned a "Positive course of action," based on the information supplied by MITCHELL, and that this was an "operation being effected under the counterintelligence program." [PL # 25] The solicitation and inducement of the local police to carry out counterintelligence operations such as raids had been a policy of the Federal Defendants since the inception of the program [See PL#1, o.p.] and its use in Chicago, especially in situations concerning weapons, had been approved and implemented during 1968 and 1969.** [See PL #301, 16, 17, 18] JOHNSON, PIPER and MITCHELL had made sure that the Alcohol, Tobacco and Firearms Division (AFTD -- who had primary jurisdiction over sawed-off shotguns) was not informed of the alleged sawed-off shotgun(s) at 2337 W. Monroe, even though they had informed them of the list of federally legal weapons [See PL #2], and although they were under a clear obligation to inform them of those which were illegal. [PL #414 (FGJ, pp. 123-4), o.p.; Tr. 6888-9] Additionally, these Defendants had not even informed Bureau Headquarters of the purported sawed-off and stolen police shotgun(s), despite the Bureau's "great interest" in BPP weapons [Tr. 8680-1] and despite their duty to notify the Bureau whenever they passed information to local law enforcement agencies.[Tr.9287] ***

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* TheDefendants made much of the fact that the communication referred to "Chicago police" rather than "State's Attorney's Police." This explanation is contradicted by a counterintelligence document dated December 10, which states that HAMPTON "was killed by the Chicago police." [PL #35]

** Both GROTH and HANRAHAN, after the revelations of the FBI counterintelligence program were made public, belatedly acknowledged that the FBI was known for getting local agencies to do its "dirty work" [Tr. 25460-76, o.p.] and that the raid was caused by such solicitation. [PL#409, Tr. 27172-4, o.p.]

*** They had informed the Bureau of the list of weapons as reflected on PL #21.

8. Plaintiffs and O'Neal: November 20 - December 4

a. HAMPTON CALLS STATEWIDE LEADERSHIP MEETING. Hampton returned from Canada on November 20. He and Rush then ordered a statewide reorganization of the Party, in order to get members to be more disciplined, to work harder on the Party's programs, and to mitigate the effects of informants. [Tr.14030-3, 29205] Downstate leaders HAROLD BELL of Rockford and MARK CLARK of Peoria were called to Chicago for meetings. They stayed at HAMPTON's apartment.[Tr.14398-9, 14004, 13986]

b. O'Neal at 2337 on December 3. WILLIAM O'NEAL went to 2337 W. Monroe sometime during the day of December 3. He returned that evening and drove Plaintiff DEBORAH JOHNSON to a friend's house. At about 8 p.m., HAMPTON convened a political education class at the Church of the Epiphany, with most BPP members present. O'NEAL and TRUELOCK, however, remained at the apartment while the political education classes were going on. [Tr. 15642-3] O'NEAL inspected the guns at the apartment [Tr. 15643] and at some point on the 3rd called MITCHELL and discussed HAMPTON's sleeping habits. [PL#58 p.2].

c. Plaintiffs and O'NEAL on the Evening of December 3.

After the class, several people returned to the apartment. VERLINA BREWER, (a 17-year-old resident of Ann Arbor) in town to learn about the BPP medical clinic, returned to the apartment and arranged to spend the night there. BRENDA HARRIS, an 18-year-old member of the BPP and a student at the University of Illinois, likewise stayed there that evening because she could not get transportation home. [Tr. 17783] Plaintiff BLAIR ANDERSON, formerly a Blackstone Ranger who had been recurited by the BPP, RONALD "DOC" SATCHEL, the BPP Minister of Health; HAROLD BELL, MARK CLARK, and DEBORAH JOHNSON also returned to spend the night at the apartment, as did Minister of Defense Bobby Rush, who later left because of marital problems. [Tr. 29203-05] Plaintiff LOUIS TRUELOCK, a prisoner for half of his 40 years, who met HAMPTON while in prison and was now an assistant to him, also remained to spend the night. They had a late dinner,

and O'NEAL ate with them but left before they went to bed. [Tr. 15644] At approximately 1:30 a.m., HAMPTON fell asleep in the back bedroom, in the middle of a phone conversation with his mother.

9. GROTH's 4:00 a.m. Briefing of the Raiders

GROTH and the 13 other raiding police officers returned to the SAO for a briefing at 4:00 a.m. on December 4th. GROTH told the men everything that his purported informant had told him: [Tr. 25398] he described the layout of the apartment and had his "rough sketch" floorplan with him, [Tr. 25400] told the men that it was a BPP apartment which HAMPTON and his "girlfriend" "frequented", and that HAMPTON allegedly kept a .45 pistol by his bed. [Tr.25406-7] A machine gun and three shotguns, which had been obtained by GROTH and JALOVEC earlier, were at the briefing, and GROTH gave certain raiders permission to bring their own personal weapons on the raid. [Tr. 25431-2] These weapons included a semi-automatic 30 caliber carbine carried by JAMES DAVIS, a sawed-off double-barrelled shotgun carried by GEORGE JONES* and a riot shotgun carried by CIZEWSKI. [Tr. 25435] GROTH did not approve of DAVIS taking hollow point of dum-dum bullets, although such bullets were indeed fired at the apartment by DAVIS' gun.[Tr. 25435, 19515, RZ100] There was no discussion of the use of tear gas, floodlights, a warning phone call or sound equipment, and none were taken. [Tr. 25433-4, 25436-7] The 14 officers then left of 2337 W. Monroe in three unmarked cars and one unmarked telephone truck -- first informing the Chicago Police of their mission when they were two blocks away from the apartment. [Tr. 25449-50]

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* This gun was not registered to JONES, but rather to one Officer Topel. [Tr. 25430]

III. THE RAID

A. THE ATTACK: COMING IN THE FRONT DOOR

At 4:30 a.m., Sgt. GROTH and Patrolmen DAVIS, GORMAN, JONES, HUGHES, HARRIS, MARUSICH and HOWARD arrived at the front of 2337 W. Monroe. [Tr. 34401] FRED HAMPTON and DEBORAH JOHNSON, who was eight and one-half months pregnant with their child, were sleeping in the south bedroom. [Tr. 16376, 16393] DOC SATCHEL, BLAIR ANDERSON and VERLINA BREWER were asleep in the north bedroom. BRENDA HARRIS was sleeping on a bed by the south wall of the living room, and HAROLD BELL, on a mattress on the floor in the middle of the room. LOUIS TRUELOCK was also lying on the bed with HARRIS, and MARK CLARK was asleep in a chair in the living room. [Tr. 15648-51]

The raiders came through the outside door into the foyer and knocked. After the knock, TRUELOCK and BELL got up and went to the rear bedroom, intending to wake FRED HAMPTON. [Tr. 15615-55] After a short pause,* the officers broke open the middle door** and came in shooting.[Tr. 17791-17803]

DAVIS kicked open the middle door (separating the "entrance foyer" from the "entrance hall") and continued to his left, toward the living room door. He charged into the living room with his rifle set in military fashion, ready to fire. [Tr. 33842-33855] He shot MARK CLARK, who stood to his left, behind the door, twice; hitting him once in the heart, which all parties concede caused CLARK's death. [Tr. 33970] CLARK's gun went off as he fell, according to BRENDA HARRIS, who watched from the bed in the corner. [Tr.17810] DAVIS testified that he also shot BRENDA HARRIS as she lay on the bed. At roughly the same moment, GROTH fired his .38 twice into that corner from the doorway, one shot apparently going through the door, which bore an entrance hole going from the hallway into the living room door, the size of a .38. [Tr. 18788] BRENDA HARRIS was shot both in the hand and leg and was probably hit by one of GROTH's shots as well as by DAVIS'. [Tr.17803-07]

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* Several of the Plaintiffs testified that they never heard the police announce that they had a search warrant and DAVIS, at deposition, testified that they entered the apartment without even announcing they were police.

** Of the three front doors, only the middle door had a lock on it, and it was very flimsy, as the door catch was mounted in plaster. See [PL#BA #4]

HARRIS testified at trial that she never fired a gun.* JONES and DAVIS claimed they saw her fire two times at them with a shotgun, just after they broke open the living room door, at which point at least four officers were in the immediate vicinity of that doorway.** [Tr. 33866] Not only were no officers struck, but there are no impact points in the area toward which they say Ms. HARRIS fired. In addition, initially all the Defendants who claim HARRIS fired, testified she was located on the bed, well into the far (southeast) corner of the living room, from where it is impossible to fire a shot out the three front doors. At trial, GORMAN, DAVIS and GROTH changed their testimony as to her location, in order to minimize this impossibility [Tr. 33745,6; 33856-9; 26025-28; 25827-32, PL# 421 (FGJ 161-2)]; but the location of blood from her wounded hand on the south wall 5' 7" east of the hall opening, and the area outlined by GORMAN's machine gun bullets on the south wall of the living room, *** confirm that she was in a position from which it was impossible to fire out the three doors without striking anything.**** [RZ13, 18822]

No expended shotshells were recovered by anyone which could have been fired from any BPP weapon, other than the single shotshell identified with CLARK's gun. The Defendants attempted to create such evidence, but were forced to admit their "error" when Zimmers proved that the two shotshells they said were fired by BRENDA HARRIS had actually been fired by Officer CISZEWSKI. [See Part ONE, IV, below.]

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* A statement attributed to her by Defendants and admitted in evidence also says she did not fire, but states she picked up a gun and was attempting to take the safety off when she go hit. She denied this at the trial. [Tr. 17857-59]

** Judge Perry wrongfully refused to permit Plaintiffs to place scale model replicas of himan figures in the model, at the location where Defendants said they were standing when these shots were fired, to show the near if not total impossibility of anyone firing a shotgun out the three doors without striking anyone or anything, with several very large men in the way. [Tr. 17488-98]

*** GORMAN testified that he stitched the wall of the living room with his machine gun, going around her body which was against that wall on the bed, hence, the location of those bullet holes (See Figure 3C), fix her position as does the blood on the wall from her wounded hand.

*** Additionally, no bullet holes or impact points were found anywhere which were consistent with these two shots.

B. THE ATTACK: COMING IN THE BACK

Officers CARMODY, CISZEWSKI, BRODERICK, CORBETT, KELLY and JOSEPH had been assigned to guard the rear of the premises. They had a walkie-talkie for communicating with the men at the front, but never used it. While the other officers stood at the bottom of the back stairs, CARMODY climbed to the porch and listened at the rear door. No explanation was offered as to why CARMODY moved ahead of the other men in the back. His assignment was supposedly the same as theirs, and he was not designated the leader. Nevertheless, CARMODY kicked open the rear door immediately upon hearing a shotgun blast within, which was probably a single shot, fired in the front hallway by Officer JONES, just as the front door was kicked open by DAVIS. There is a hole from a buckshot blast in the wall of the foyer, just to the left of the living room door, just above waist height, which was not there before the raid. [PL# BA 4A; Tr. 18645-18675; 19763-6] JONES admitted this was where he was when the living room door opened, but denied he fired in the hall or that he had #8 shot in his gun. Yet Zimmers said he found #8 shot in the hole. One fired shotshell was recovered which had been loaded with #8 shot and which had similar characteristics only to the left barrel of JONES' gun. [RZ110A,19763]*

It is also possible** that the shot in the hall was fired by JONES by accident, at about the same time. His gun was equipped with a hair-trigger, and the space in the hallway between the near edge of the impact points and the opposite door and jamb was only slightly wider than the gun is long.*** Upon coming through

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* "Similar characteristics" is a lesser standard of camparison than a positive identification, such as that made by Zimmers on the CISZEWSKI shotshells N and O. The fact that the expended shotshells were dissimilar to all other weapons raises a strong inference that JONES and JONES alone fired #8 shot at the apartment that morning. [Tr. 18754]

** It is also possible to infer that JONES thought he was in the living room as he came through the middle (second) door -- as O'NEAL's floorplan had only two doors marked at the front -- and JONES was firing at where he thought a sentry would be.

*** The Defendants attempted to show, with much bluster, that JONES' gun was too long to fit into this space where the "JONES shot" was fired; but Zimmers, who measured the gun and had the dimensions of the hallway in front of him, stated that the gun was still capable of firing the shot. [Tr. 20530-2]

the middle door and levelling the gun towards the living room as DAVIS was entering, he might have banged the butt against the frame of the door to his right, causing it to discharge into the corner to his left. This shot still would have come at the same time DAVIS and GROTH were opening fire at HARRIS and CLARK in the living room, and CARMODY's entrance at the back was, in either case, cued by the outbreak of shooting in the front. See Figure 3 A-B.

CARMODY said he entered the kitchen with his .38 revolver in his right hand, and admitted firing a total of five times. [PL#EC#3 Tr. 26167,28249] He claims he fired first three shots while in the back doorway, in response to fire at him from a "gun in a hand" in the back bedroom. [Tr. 26190; 201-240; 235-262] There is no physical evidence of such shots, either impact points or expended cartridges, and the implication the Defendants wished to create was that the shots, like the ones they falsely claimed BRENDA HARRIS fired in front, must have sailed out of the apartment through open doors, or in their own words, "been caught on an 'air hook!" [PL#417 (FGJ, pp. 152)] CARMODY also testified that the east door between the kitchen and dining room was closed.*[Tr.26578] From the architect's plat of the apartment, it is obvious that one could not fire from the south bedroom out the kitchen door with this east door closed. Consequently, at trial CARMODY said the hand came from the dining room, which he had "mistakenly" referred to as the back bedroom in his December 4th police report.** (The report itself, in another place, refers to this room as the dining room.) Moreover, there is no physical evidence of the shots CARMODY claimed he fired at this hand from the kitchen door.***

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* This testimony was coroborated by several Plaintiffs who stated that there was a large metal mangle up against this door, keeping it shut, or at most, open a crack.

** CARMODY's explanation was that he thought that the dining room was the back bedroom, when he wrote his December 4th report. The report itself belies this, as it refers to the real dining room as the "dining room". [Tr. 26188-90,EC#47]

*** His shots in a north-northeast direction towards the front would have had to strike the north wall of the kitchen or the north or east wall of the dining room. There are no impact points from a revolver in any of these areas. (Plaintiffs 135Z)

CARMODY then moved through the kitchen, and claims that he fired his pistol into HAMPTON's bedroom [Tr.26560] After CARMODY entered, Defendants CISZEWSKI, BRODERICK and CORBETT followed him into the kitchen,and to the west dining room doorway; CISZEWSKI and BRODERICK fired their shotguns at the two bedrooms. [Tr.33760]

At this point in the raid, the apartment was completely under the control of the police. MARK CLARK was dead, BRENDA HARRIS lay bleeding on the bed in the living room, and all those who were not shot or captured were pinned into two bedrooms. HAROLD BELL, and 18-month U.S. Army combat veteran, who served as a weapons adviser to ARVN battalions in Vietnam jungle fighting, and had been under fire many times in war, and wounded, said the operation was done with military swiftness and precision, with the raiders moving to a series of vantage points under covering fire, and gaining control of the whole interior in rapid fashion. [Tr.14373-90]. The defense declined to cross-examine him.

C. THE MURDER OF FRED HAMPTON

When TRUELOCK and BELL reached the back bedroom, they tried to awaken FRED HAMPTON. Heavily sedated, he did not respond to their attempts to shake him and speak to him, [Tr. 14118-9] although he was normally a light sleeper (29763) and never used alcohol or drugs.* TRUELOCK said that when the shooting started

* Both O'NEAL and BELL testified that HAMPTON never used drugs. [Tr.23150, 14070,1] The Plaintiffs called Elenor Berman, Chief Toxicologist from Cook County Hospital for ten years, to testify. She had received blood samples from HAMPTON's body from Dr. Victor Levine, who had done a second autopsy on HAMPTON's body. She personally tested the blood on two occasions, each time running two series of tests: the ultraviolet spectrophotometer (UV) and the thin layer chromotography (TLC). On the first occasion, December 12, 1969, her battery of tests showed that there was 4.5% mg. secobartital in HAMPTON's system at the time of death--an amount which would make it very difficult for him to awaken. In order to be sure of her startling findings, she retested the blood sample onJanuary 22, 1970, and again found secobarbital -- 3.0% -- in the samples; the decreased amount was due to deterioration of the barbituate, even when refrigerated. [Tr.21212-21398]

The Defense called two witnesses in an attempt to rebut Berman. They first called FBI chemist Gormley on their case. He testified that he had examined the blood two weeks after Berman finished her tests and found no significant barbituate in the blood. The Court required no chain to be proved (other than accepting an FBI document) as to the condition of the blood during those two weeks, although refrigeration would be crucial to preserving the rapidly [continued]

he climbed onto the bottom corner of the bed by the wall, and DEBORAH climbed over HAMPTON and got between him and TRUELOCK. As shots came into the bedroom, BELL tried to take cover just inside the door by the closet. In a pause, one of the officers reached through the door and grabbed him, and he came out with his hands up.* He was pushed to the floor on his stomach, and his hands cuffed behind him. The officers kicked him in the groin and the head and threatened him with imminent death. [Tr.14128-35] CISZEWSKI and BRODERICK were firing towards the two bedrooms from the dining room. TRUELOCK called out that there was a pregnant woman in the back bedroom, and there was another short pause in which he and DEBORAH came out of the room with hands raised. [Tr.14129 - 30] Although they had been right next to HAMPTON in the bed, neither had blood on their bodies or clothing when they came out of the room, had seen blood or wounds on the face or body of FRED HAMPTON, nor had been wounded by firing from the shots coming through the walls and through the doorway. [PL. DG#1, 14147]

In the front, GORMAN had entered the living room and now fired his .45 caliber Thompson submachinegun into the south wall on both single

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deteriorating seconal. Gormley admitted that he did not adjust the ph of the blood sample before he attempted to extract the barbituate from it--a mistake of such magnitude that it would prevent over 90% of the remaining barbituate from being extracted and found on the subsequent tests. [See Tr. 32940-021,35411-20, 35445-524] The defense also called Morton Mason, a toxicologist whose lab assistants tested various of HAMPTON's embalmed tissues three months after his death and found "no significant barbituates." These tests were greatly hindered by the length of time from death, and the presence of embalming fluid in the tissues, which masked the presence of barbituates--which was conclusively shown on rebuttal by Dr. Berman, who simulated Mason's tests with a barbituate sample.[35445-524] The Court also allowed the defense to introduce a lab report of Coroner's Chemist Christentipolis, whose prior credentials consisted of testing mayonaise for Durkee Foods, and whom the defense dare not call because his "findings" had been totally discredited before the FGJ [See PL #EC10], as he had only run the preliminary UV test. The Court allowed this hearsay report in, for its truth, and did not require any showing of chain of custody or the condition in which the blood allegedly tested by him was kept.

*BELL, in an unsworn statement to his attorney, said he picked up a gun but did not fire it, before he surrendered. [PL# HB142] At trial he said this was not true; that he had said this earlier only because he wanted to have done something to defend HAMPTON.

and automatic fire. He said he "stitched" the wall, from left to right (east to west), making a slight upward arc to avoid hitting BRENDA HARRIS, who was sitting terrified on the bed by the wall. These shots went south, toward the bed of FRED HAMPTON. Several of the bullets went through the north bedroom into the south bedroom. GLOVES DAVIS likewise fired his .30 caliber carbine through the west end of the south wall, also toward the head of HAMPTON's bed. The 42shots of DAVIS and GORMAN from the living room converged at the head of HAMPTON's bed, located where it was shown on O'NEAL's floorplan. [Figures 2-6] [Tr. 18802]

After JOHNSON and TRUELOCK left HAMPTON's bedroom, CARMODY entered. He had previously stated that "we knew...uh, we had seen, a man lying on the bed."* HAROLD BELL said that, while in the kitchen, he clearly heard a raider say, "That's Fred Hampton," then shots, then "Is he dead?"--after which a voice said "Bring him out," and there was a thud of something falling to the floor. [Tr.14128-40] DEBORAH JOHNSON, also in the kitchen, heard a raider say, "He's barely alive, he'll barely make it." She then heard two shots and, "He's good and dead now." [Tr. 16876-78, 16994,16457]

Two bullets were shot through FRED HAMPTON's head, on roughly the same downward angle, killing him. One entered the right forehead and exited below the left ear. The other went from right temple to left throat. [PL#VL#8, Fig. 6B] They were .38 caliber or smaller. CARMODY testified he went into the bedroom with his revolver in his right hand, and moved to the head of the bed where HAMPTON still lay. [Tr.26322, 26,287-88, 26745-50], at a position consistent with firing the shots into HAMPTON"s head. He was the only officer to enter from the rear who

*This telling slip was made during the CBS re-enactment, and can be viewed. [Tr. 24448] CARMODY's attempt to cover his admission that they knew HAMPTON was in the bedroom is belied by his later testimony that he had not seen HAMPTON in the bedroom, and by the physical layout of the apartment and the darkness in the apartment, which would make such a viewing almost impossible from the location where CARMODY stated he had been. Thus CARMODY's knowledge of HAMPTON's location must have been obtained pre-raid.

fired anything but a shotgun. In his Firearm Use Report, filled out the same day, on the question of the condition of anyone hit when his gun was discharged, CARMODY checked the box marked "critically wounded." In the questions as to distance from the victim when shots were fired, he marked under first shot, "10 feet," and under last shot, a question mark.* At trial, CARMODY admitted firing into the back bedroom, but swore he didn't shoot anyone. [Tr.26560]

The bullets which went through HAMPTON's brain and killed him were never found. One .30 caliber slug was recovered from his left chest, and identified as coming from DAVIS' gun.** DAVIS swore he never left the living room until he left the apartment, but said he could not recall what he did after firing his burst through the living room wall in the direction of HAMPTON's bed.[Tr.34052]

DAVIS further swore he had never seen FRED HAMPTON that morning, but [Tr.34052] Chicago attorney Lawrence Kennon, who had known DAVIS for many years, chanced to meet him at the Criminal Courts Building later that morning and said DAVIS told him he had been on the raid:

> He told me the other police came in after him and that then he and the others had rushed through the apartment to the back. He told me that the occupants were shooting at them and that he and the other officers were shooting at the occupants. DAVIS then told me he saw Fred Hampton's body in the rear of the apartment and that HAMPTON was dead. DAVIS appeared to be Happy to have participated in the raid. [See PL #LK1, o.p.]***

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*CARMODY's Firearm Use Report was not among those turned over to the IID and later to the FGJ; it was finally "located" and given to the FGJ towards the end of its investigation. [PL #EC 3] See Figure 10 for Report.

**Zimmers made the identification by comparing the bullet in HAMPTON with bullets recovered by the "Andrew's team-who collected evidence items for the survivors' defense after the police left the apartment. Zimmers verified that both bullets came from the same gun, then proved by a test shot that the Andrew bullet came from DAVIS' gun. The Court wrongfully rejected the identification of the bullet by Zimmers [Tr.19483-94], because he would not allow any testimony concerning any evidence collected by the Andrew people without the proving of the complete Andrew chain. [See Part THREE, DIRECTED VERDICT, infra.]

***Attorney Marc Kadish, one of the survivors' lawyers at that time, came later in the conversation and, not knowing who DAVIS was, mentioned that he had been to 2337 W. Monroe that morning and that it looked like murder (cont.)

DAVIS, at trial, denied that he knew Kennon. [Tr.34052]*

D. THE RAIDERS "MOP UP"

CARMODY took HAMPTON's body by the wrist and dragged it [Tr. 26401, 26560] out of the bed and halfway into the dining room. As HAMPTON lay on his stomach in a pool of blood, the police concentrated their fire on the north bedroom. Officer JONES fired his shotgun into the doorway of the north bedroom, and BRODERICK fired into the room from inside the bathroom. [Tr.34413, 34385] Plaintiffs SATCHEL, BREWER and ANDERSON were lying on the floor between the two beds inside the dark north bedroom. Right after BRODERICK fired his gun into the north bedroom, GORMAN came to the door. With his machinegun on automatic fire, he sprayed the closet just inside, to the right of the doorway,[Tr.33716] then drew his fire low across the room, shooting all three occupants as they huddled on the floor. DOC SATCHEL was hit four times, BLAIR ANDERSON twice, and VERLINA BREWER twice.** [PL#DW2-6] The pattern of .45 caliber shells taken from the east wall of the north bedroom, and identified as coming from GORMAN's gun, shows that he fired across the width of the room. [Tr. 902349]

GORMAN swore he shot each of the three teenagers in this room as two of them rose from behind the bed, facing him opposite the doorway. [Tr. 33761] He said he could see the "gray" police shotgun in the hands of BLAIR ANDERSON, and that VERLINA BREWER also had what he believed to be a gun in her hands.[Tr.33761]

to him. DAVIS then grabbed Kadish and threw him up againt the wall. The Trial Court wrongfully refused to allow the Plaintiffs to question DAVIS about this admission or this assault. [Tr. 34057], citing the specious grounds that no notice was given (notice was never required concerning cross-examination questions previously), and later refused Plaintiffs' request to call Kennon on rebuttal and originally even refused to accept their offer of proof.[Tr.35429-443, 35813-24, 35814]

*The Defendants, trying to protect DAVIS from perjury, later made an implausable offer of proof that DAVIS knew Kennon, but by face rather than name.

**SATCHEL's colon was torn up and had to be partially removed. He was in the hospital for almost a month. HARRIS was shot in the hand and leg; BREWER had her knee shattered, and ANDERSON was shot in the penis.

BLAIR, however, was shot from the side; VERLINA was hit by a bullet entering the back of her knee and exiting the front; and DOC's wounds go up the front of his body from knee to stomach, indicating he was lying horizontally when GORMAN fired his burst across the room. [PL #DS #2]* Although the raiders testified they saw different numbers of shots fired from this room, all three of these Plaintiffs denied firing or even holding a weapon, and there were no expended shotshells or bullet casings found in the room or elsewhere in the apartment which matched any weapons which the Defendants claimed were found in this room. Also, there were no impact points in the apartment which would have resulted if shots were fired from this bedroom--especially on the bathroom door which faced the door of this bedroom. Once again, the Defendants tried to suggest that shots went all the way outside, but a look at the floorplan shows the impossibility of this especially from Plaintiff's location in the middle of the room.**

After DOC, BLAIR and VERLINA were shot, GORMAN and the other officers then kicked, pushed and dragged these wounded persons out of the room. DOC said he could not walk, but finally dragged himself up and hopped out when the police

*Further doubt is cast on this story by BRODERICK's testimony--that he fired shotgun blasts into the bedroom from the bathroom just prior to GORMAN's fire at SATCHEL, ANDERSON and BREWER. [Tr. 3462,3] It would have been suicide to be rising with weapons just after a man with a shotgun fired at them from ten feet away.

**The raiders who were stationed outside also contradicted this theory, as they said that they did not hear or see any bullets, trajectories or impacts come out of the back or front doors. [PL #410 (PL. 573);417 reoffered as PL 574 ,] The Court admitted these statements at the end of the Plaintiffs' liability case (4/4/77), but would not allow them read to the jury. The Plaintiffs tried to read them in rebuttal, but the Court would not allow it, as the raiders had been directed out in April. The Plaintiffs then moved to call these raiders for the limited purpose of illiciting this testimony, but this was likewise denied. [Tr.] The defense also pointed to the unsworn attorney-client statement of ANDERSON, where he "thought" he "heard Doc firing." DOC Satchel denied firing, and ANDERSON at trial said it wasn't DOC's firing which he heard.

threatened him. The raiders continued to swear at them, call them niggers, and to beat and abuse them and the other survivors after they were brought into the kitchen and dining room. DOC was told, "You won't be able to have kids now," and several officers laughed. [Tr.12205] He was kicked in the feet and the behind and told, "Get up, Nigger," [Tr.12189, 12205] A raider said to BRENDA HARRIS, as she lay terrified on the bed with her eyes closed, "Die; you don't have any right to live." [Tr. 17825]

HAROLD BELL had a shotgun placed to his head and was told to spread his legs, then kicked in the testicles and told he ought to be killed. [Tr. 14129, 14135] VERLINA, seeing FRED's body, asked to give him artificial respiration. An officer said, "Don't touch him or I'll blow your head off." [Tr. 8/4/76] HAROLD BELL said it sounded like Vietnam, with people moaning and crying out in pain. [Tr. 14134]

All 14 raiding police officers were present inside the apartment during the beatings and abuse, participated in them and did nothing to try to stop them. FRED HAMPTON was still lying unattended on the floor in the dining room. All 14 police officers then ransacked the apartment, turning beds and dressers over and emptying their contents throughout the apartment, and destroying and mutilating evidence of what had occurred. [PL #553 PL. 410 1SSGJ84-5] All 14 police officers saw FRED HAMPTON lying on the floor with blood coming from his head, but none did anything to try to determine if he was alive and could be helped. At no time did any of the officers seek to determine the nature of Plaintiffs' injuries, or to assist or protect them in any way.

At the conclusion of the shooting, HAMPTON and CLARK lay dead, and four of the survivors seriously wounded and bleeding on the floor. Over 90 bullets had been pumped into the thin plaster walls of the tiny apartment by police machine guns, rifles, shotguns and pistols.* And after the shooting ended and the carnage was announced on police radio, a cheer went up, and a faceless policeman, speaking with cold accuracy, said, "That's when to get them, when they're [asleep] in their beds. **

EXHIBITS AND PHOTOGRAPHS (Figures 1-8, 10) FOLLOW

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*Zimmers testified that he tested all the evidence collected (including by the Andrew chain) and that all of it showed only one shot which matched the survivors' guns, while 82-99 shots could be matched to the police guns. [Tr. 19787] The trajectories in the apartment totally support this conclusion. The defense made much of an attorney-client statement where, almost as an afterthought, Plaintiff TRUELOCK said he fired two shots from a "pump rifle." Beyond there being no impact points or spent cartridges to support this claim, TRUELOCK himself denied at trial that he fired these shots, explaining that he had said this earlier because he was embarrassed that he had done nothing to defend HAMPTON and because he was suspected of being the informant who set up the raid. Additionally, there was no "pump rifle" seized at the apartment, and the trajectory that TRUELOCK indicated would have had to go through the east door between the kitchen and dining room which all parties have closed, or only slightly ajar.

** transcript of a police tape
This/was originally admitted on April 4, 1977 [PL #450] It was never read to the jury and was struck on rebuttal after some slight of hand by the Defendants, as they introduced a police tape of the police calls, which ended a few minutes before the cheer went up, and therefore did not contain this passage, which was spoken after the Defendants' tape concluded. [Tr.35911-18]

PLAINTIFF'S EXHIBIT NON 21ID

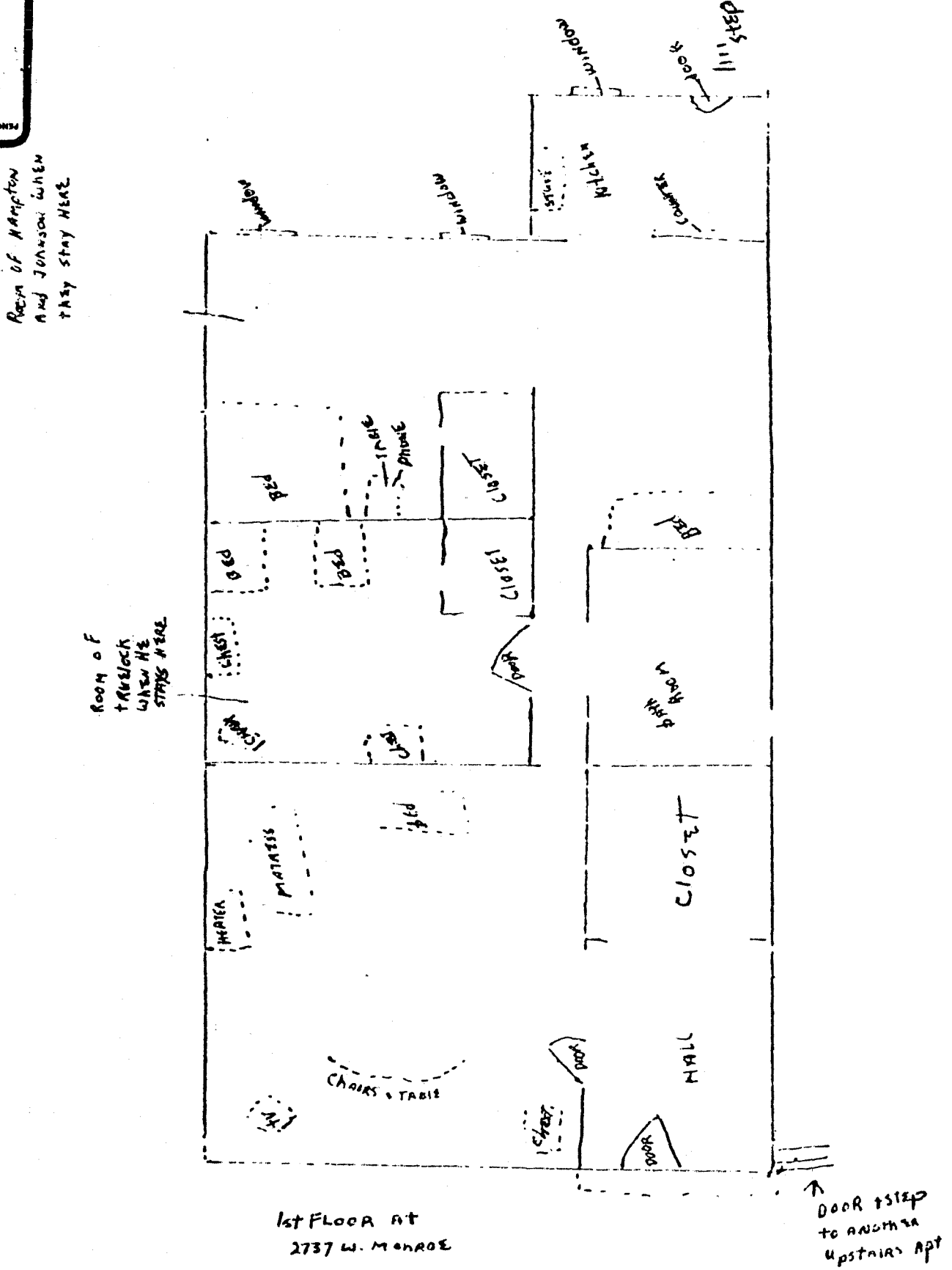

Fig 1. THE MITCHELL/O'NEAL FLOORPLAN, DEPICTING AND MARKING THE BED ON WHICH HAMPTON WAS KILLED

FIG. # 1

FIG. 8:DEFENDANT WILLIAM O'NEAL

FIG. 8B: CHICAGO POLICE REMOVING FRED HAMPTON'S BODY

INSTRUCTIONS: Prepare in TRIPLICATE. Forward original to Inspection Division, duplicate to officer's district/unit, and triplicate to district of incident.

DAY: 4 | MONTH: Dec. | YEAR: 69 | 0445

NAME OF OFFICER USING FIREARM	STAR NO.	RANK	UNIT OF ASSIGNMENT	DUTY STATUS	IF ON DUTY, TYPE OF ASSIGNMENT
Edward T. Carmody	2517	YO	S/A off.	[X] ON DUTY [ ] OFF DUTY	Special Assign.

TYPE OF INCIDENT (BURGLARY IN PROGRESS, FAMILY FIGHT, ETC.)	LOCATION OF INCIDENT	DIS TRICT	INCIDENT OCCURRED
Serving search warrant	2337 W. Monroe St.	13	[X] IN-DOORS [ ] OUT-DOORS

TYPE OF PREMISES	R.D. NO.
Apartment	H-475521

DESCRIBE MANNER IN WHICH YOU BECAME INVOLVED - (RADIO ASSIGNMENT, ON VIEW, ETC. - IF BY RADIO ASSIGNMENT, GIVE WORDING OF MESSAGE.)

Attempt to serve search warrant, shot at by persons inside apartment.

HUSH

LIGHTING CONDITIONS: [ ] DAYLIGHT [ ] NIGHT [ ] POOR ARTIFICIAL [X] GOOD ARTIFICIAL [ ] DUSK

WEATHER CONDITIONS: [ ] CLEAR [ ] RAIN [ ] SNOW [ ] CLOUDY [ ] FOG

WEAPON DESCRIPTION (SPECIFY): [ ] COLT [ ] SMITH & WESSON [ ] OTHER [X] 38 CAL. [ ] 357 MAGNUM

NO. OF OPPONENTS	WHAT WEAPONS DID THEY USE?	NO. OF SHOTS FIRED AT YOU	DISTANCE FROM SUSPECT WHEN: FIRST SHOT WAS FIRED?	LAST SHOT WAS FIRED?	NO. OF SHOTS FIRED BY YOU
none	shotguns, 45cal.	?	10 foot	?	5

OFFICER'S POSITION?	DID YOU HAVE GUN DRAWN AND READY FOR USE BEFORE YOU NEEDED IT?	ARE YOU	GUN WORN ON
[X] STANDING [ ] SITTING [ ] LYING DOWN [ ] KNEELING [ ] OTHER (SPECIFY)	[X] YES [ ] NO	[X] RIGHT HANDED [ ] LEFT HANDED	[ ] RIGHT SIDE [X] LEFT SIDE

DID YOU HAVE TO RELOAD?	IF YES, HOW MANY WERE YOU ABLE TO RELOAD?	HOW LONG DID IT TAKE?	DID YOU COUNT YOUR SHOTS AS YOU FIRED?	DID YOUR WEAPON WORK PROPERLY? IF NO, EXPLAIN BELOW	DID YOU HAVE TO SIGHT AND AIM?	NO. OF SHOTS FIRED SINGLE ACT.	NO. OF SHOTS FIRED DOUBLE ACT.
[ ] YES [X] NO		SEC.	[ ] YES [X] NO	[X] YES [ ] NO	[ ] YES [X] NO	5	

INJURIES: SUSPECT WAS: [ ] NOT WOUNDED [ ] SUPERFICIALLY WOUNDED [X] CRITICALLY WOUNDED [ ] UNKNOWN [ ] KILLED

OFFICER INVOLVED WAS: [ ] NOT WOUNDED [ ] SUPERFICIALLY WOUNDED [ ] CRITICALLY WOUNDED [ ] KILLED

DESCRIBE PROTECTIVE COVER WHICH YOU USED - (LIGHT POLES, DOOR WAYS, CAR, FURNITURE, ETC.)

Door way

WHY DID YOU USE YOUR WEAPON? [X] PROTECT SELF [ ] PREVENT FELONY [ ] SUSPECT WANTED FOR _____ [ ] PROTECT CITIZEN [ ] PREVENT ESCAPE OR FLIGHT OF FELON [ ] OTHER (SPECIFY)

NARRATIVE: (GIVE A DETAILED ACCOUNT OF THE INCIDENT GIVING PARTICULAR ATTENTION TO PROBLEMS WHICH ARE ENCOUNTERED THAT COULD HAVE BEEN AVOIDED THROUGH MORE ADEQUATE TRAINING, BETTER EQUIPMENT, ETC.)

While attempting to serve warrant at 2337 W. Monroe, subject inside the apartment fired upon officers.

5

USED

NO. 5

PLAINTIFF'S EXHIBIT 43

Admitted

SIGNATURE OF OFFICER PREPARING REPORT: Edward T. Carmody

DATE: 4 December 1969

CPD-28.503 (REV. 4/67) 0445

FIG. 10: CARMODY'S FIREARM USE REPORT WHERE HE MARKS "CRITICALLY WOUNDED"

IV. THE COVERUP

A. DECEMBER 4th AT THE APARTMENT

When the shooting ceased, HARRIS and GORMAN called JALOVEC at approximately 5:15 a.m.* Calling from the apartment phone, GORMAN told JALOVEC that HAMPTON was dead, and asked him to come to the apartment to supervise the gathering of evidence. JALOVEC refused and ordered the raiders to leave the apartment. [PL #407 (FGJ, pp. 236-7)2 JALOVEC ordered the raiders to bring the weapons from the apartment to the SAO, and they seized other items also--including books, records, money and tapes. [Tr. 25537-9] This was done generally without following any procedure designed to record the specific location or identity of the items seized. The location of weapons was generally not noted, nor were they kept in a way so that fingerprints could be taken. [Tr. 25553] In fact, GROTH told the Crime Lab personnel not to dust the seized weapons for fingerprints. [PL #563 (SSGJ, p. 9], o.p.] The officers did not even record whether there were unexpended rounds inside the weapons. Bullets and cartridge shells were picked up and dumped in a box without any record of where they were found. [Tr. 25547]

A few items, however, were handled with great attention. Defendant CARMODY specifically remembered finding a .45 pistol in the south bedroom, [26622] near FRED HAMPTON. This was the only weapon he inventoried, but different Defendants claimed to have seen it unloaded and each reported a different number of rounds in the clip. [Tr.PL#EC6, JG#2] CARMODY and GORMAN both claimed to remember clearly the "gray" police shotgun allegedly found in the north bedroom. They each said its "grayness" was so distinct, even in the dark,

*HARRIS called JALOVEC at home, GORMAN called him as soon as he got to the SAO.

that both are certain it was there; either in BLAIR ANDERSON's hands, according to GORMAN; or in SATCHEL's hands, where GORMAN originally told BRODERICK he seized it. [Tr.34325-3],PL # RB #1] There is, of course, no physical evidence to support a claim that either of these weapons were fired by the occupants

Defendant KOLUDROVIC, who arrived with the Mobile Crime Lab, said that he found two shotshells under the dresser in the living room, near the foot of HARRIS' bed. [PL 418,(rpt. 12/4/69)] These two shotshells were later falsely identified by the Defendant SADUNAS of the Crime Lab as having been fired from the gun the officers said they took from BRENDA HARRIS. [PL #RZ#90]

GROTH told KOLUDROVIC to look only on the west walls for evidence of firing [Tr. 25546], and he made his investigation with a view towards confirming what GROTH said had had occurred during the raid [PL #418 (FGJ, pp. 303-4)] In a report dated December 4, 1969, he said both bullet holes in the living room door came from inside-out. [PL 418 (12/4 report)] In fact, there had been one shot in each direction, as later proved by Zimmers from the obvious condition of the wood. [Tr. 18784]

The Defendants left the body of FRED HAMPTON unattended in the dining room at least until the Crime Lab officers arrived and took the photo in evidence as PL #138 (Figure 6A). During this period, while they gathered weapons to show on TV, no one checked his life signs, although every raider said he did not know if HAMPTON was dead, and each denies shooting him. All the weapons seized in the apartment were displayed at a press conference later that morning, but the Defendants kept their own guns, and did not turn them over to the Chicago Crime Lab until over a month later. [PL #RZ#93] Further, GROTH ordered KOLUDROVIC and Crime Lab photographer Earl Holt not to dust the seized weapons. [PL 563, pp. 9, o.p.]

The Defendants left the apartment in total disarray--overturning beds, emptying drawers, and with blood, paint and bullet holes everywhere. [PL #553 Tr. 25537] The Defendants made no attempt to seal the apartment, and it was left open. [Tr. 25623] Members of the BPP and attorneys for the survivors arrived shortly after the Defendants left, gathered over 200 items of evidence which had been left behind, and made a color film of the condition of the apartment and the process of collecting evidence.*

When they left 2337 W. Monroe, Defendants CARMODY and CISZEWSKI went to the hospital. CARMODY had injured his hand breaking the rear window with his gun [Tr.26214-16], and CISZEWSKI was struck by a shot through the walls from the front, where DAVIS and GORMAN were firing, when he entered the south bedroom. However, at a TV press conference given upon their release from the hospital at 7:30 a.m.** CARMODY and CIZEWSKI each gave the impression that they were shot by the occupants, while denying that they knew it was a BPP apartment and claiming that HAMPTON and CLARK were in the gun battle. [Tr. 26795-8, o.p.]*** By 8 a.m., JALOVEC had also already spoken on the radio about the occurrence. [PL 428 (FGJ, pp. 148-9)]

B. THE RAIDERS RETURNED TO THE SAO

Returning to their office, the raiders discussed their version of the events with HANRAHAN and JALOVEC and with each other. [Tr. 27363] CARMODY told GROTH that HAMPTON had fired from the back bedroom [Tr. 25599], and GROTH

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*The Court refused to allow the jury to see the the film--probably the most accurate and poignant rendition of the apartment directly after the raid--saying it was "biased" because it was made at the direction of the survivors' attorneys. [Tr. 13465-70]

**Wrongfully excluded by the Court as "improper redirect" evidence. [Tr.26776-81, 26815-30]

***At trial CARMODY admitted that he never saw HAMPTON fire a gun, and that he injured his own hand. (The flying glass was caused by his own swinging of his gun into the window.)

HANRAHAN and JALOVEC had a detailed discussion about the raiders' version of the raid. [Tr. 25600] After he learned that CISZEWSKI and CARMODY had appeared on TV [Tr. 25565], GROTH told his men not to talk to the press. HANRAHAN says he first learned that GROTH had had a floorplan of the interior of the apartment that morning,* and GROTH destroyed the floorplan the same day. [Tr. 25477] HANRAHAN discussed the raid with JALOVEC, DAVIS, GORMAN, and possibly other raiders. [Tr. 27404]

During the mid-morning, the seized weapons were moved to the library of the SAO, and displayed to the press. [Tr. 25563] The order to move the weapons was given by a "superior" to GROTH.[Tr. 25559-61] HANRAHAN denied giving the order, but "was not surprised" that the guns appeared in the library. [Tr. 25559]

C. MITCHELL VISITS THE SAO

Defendants JOHNSON, PIPER and MITCHELL said they first learned of the raid through the media early that morning. JOHNSON and PIPER then met in JOHNSON's office to discuss it, and PIPER told JOHNSON he would obtain more information. [Tr. 9719-23] JOHNSON received a call from Thomas Lyons, who told him that the Intelligence Division had had nothing to do with the raid. [Tr. 5321] HANRAHAN's office informed them that HAMPTON's body had been positively identified, and CLARK's tentatively. [PL #87] At 9:26 a.m, PIPER and JOHNSON approved an "urgent" teletype to FBI Headquarters with this information. [PL #87] PIPER then met MITCHELL and sent him to HANRAHAN's office to "determine additional information about the raid." [Tr. 9537-8]

MITCHELL arrived at the SAO during the morning with another unidentified Chicago FBI agent. [Tr. 8412, 8446] He was taken to the library where he met

*At trial, HANRAHAN changed his testimony, saying he only learned of the floorplan much later. The Court refused to allow his earlier testimony in--either as impeachment or as an admission. [See also PL #409 (SSGJ, p. 50), o.p.; Tr. 28105-10, 27288-97]

JALOVEC and had a conversation with him in which JALOVEC pointed out the "stolen Chicago police shotgun and the sawed-off shotgun." [Tr. 8408, 8417-20] HANRAHAN joined them for a short conversation. [Tr. 8412-14] JALOVEC told MITCHELL he had "forgotten" to put MITCHELL's information about a stolen police shotgun in the search warrant affidavit [Tr. 8420], and asked if MITCHELL minded if it got out that he was the source for the raid. [PL #422 (Dep., p. 464), o.p.] MITCHELL remained in the library for about 30 minutes [Tr. 8409-10, 8435], during which time he spoke with GROTH, who gave his version of what happened in the raid. [Tr. 25782] MITCHELL left just prior to the start of HANRAHAN's press conference. [Tr. 8409]

D. HANRAHAN'S FIRST PRESS CONFERENCE

HANRAHAN held his first press conference at about 11:00 a.m. [Tr. 25607] GROTH, JALOVEC and other raiders were present. [Tr. 27402] HANRAHAN had not been to the premises, or consulted with the Crime Lab, and he knew the occupants of the apartment were in jail or in the hospital and that his office was preparing charges against them. [Tr. 27402] Standing next to the guns displayed on the library table [Tr. 27383], HANRAHAN told a roomful of reporters and television cameras that only by the Grace of God had his "brave" police officers avoided death in a gun battle with the "violent," "extremely vicious" and "criminal" Black Panthers. He repeatedly pointed to a .45 pistol which he claimed was used by FRED HAMPTON in "attacking" the police, and called on all "lawabiding citizens" to support the raiding police and their actions. [Tr. 27097-101]* HANRAHAN, JALOVEC and GROTH then answered questions. [Tr. 25603-8]

*At trial HANRAHAN said he may or may not have been told that HAMPTON fired a .45, and he could not recall who might have provided that information; nor had he inquired of the raiders. [Tr. 27449-55] HANRAHAN also said at trial that he was told an individual with a black hand and a white t-shirt fired at police. [Tr. 27398] FRED HAMPTON was wearing a dark shirt, according to (cont.)

E. HANRAHAN CHARGES THE SURVIVORS

Even as they were talking to the press, HANRAHAN and JALOVEC authorized the filing of charges of attempted murder, aggravated battery and unlawful use of weapons against each of the survivors, with bond set at $100,000 for each These charges were based on sworn complaints that each Plaintiff had fired at the police. [PL # 530-45 o.p.] DEBORAH JOHNSON, eight and one-half months pregnant, stayed in Cook County Jail until December 6; and several of the other survivors were released after their bail was lowered on December 21 or 22, 1969. The survivors answered ready for trial in Felony Court December 5 and demanded a preliminary hearing, but this was denied. [Tr. 27648]

F. FBI, POLICE AND COMMUNITY RESPONSE TO THE RAID.

MITCHELL returned to the FBI offices on December 4 and, with PIPER and JOHNSON, continued to follow events closely. JOHNSON and PIPER approved two more teletypes to Headquarters, reporting on the situation, including a purported description of reactions in the black community. [PL #86, 88] O'NEAL reported to MITCHELL concerning BPP plans to raise money, the movements of Bobby Rush, and developing funeral arrangements. [PL 86, 88] He went to visit HAMPTON's mother and father in Maywood to pay his "respects," and later volunteered to serve as a pallbearer. [Tr. 24609] In the police station on the morning of the 4th, LOUIS TRUELOCK heard swaggering officers announce, "Rush

(cont.) photo [PL #RZ67] CARMODY said he never told anyone HAMPTON was firing a .45, but GROTH stated that CARMODY told him this, and that he may have told HANRAHAN. [Tr. 25599-600] Additionally, on December 5, Racial Matters Agent Alan Stephens wrote in a report to FBI Headquarters that "GROTH had advised" that HAMPTON had appeared in the back bedroom doorway firing a pistol and a shotgun, and was killed by officers returning his fire. [PL #3] The Court refused admission of this document as PL #D6 #3 while GROTH was on the stand, so he could not be questioned about it; it was later admitted as PL #3. Of course, there is no ballistics or physical evidence to support the contention that HAMPTON could have fired. [See Zimmers, infra]

is next;" sure enough Rush's apartment was raided early the next morning by officers from the Chicago Police Department. [Tr. 29687] Forewarned, Rush was not present when the police came, and hid out, with O'NEAL's assistance, until he presented himself at Operation Breadbasket on December 6th.* O'NEAL told MITCHELL that he was angry that the raid had taken place without his knowledge, and in response to his questioning, MITCHELL told him none of his information had been supplied to the SAO. [PL. #23, 422 (Dep., pp. 398-9), o.p.; Tr. 24599-600] "Shortly after" December 4, MITCHELL met again with GROTH to hear more about the raid. [PL #422 (Dep., pp. 372-3]

The killing of HAMPTON met with a "tremendous response" in Chicago. [Tr. 24611] Close to 1,000 people attended a memorial service, and thousands came to HAMPTON's funeral -- many of whom stood outside the Church in freezing weather to listen to the eulogies by Jesse Jackson, Ralph Abernathy, Bobby Rush, and others. [PL #110, Tr. 29046-50] Many investigations were being demanded [Tr. 24611], and responsible community leaders and organizations -- such as the NAACP and the mayor and trustees of Maywood -- called for independent investigations. [Pl #110] The BPP termed it outright murder and assassination, and laid the blame squarely on the shoulders of HANRAHAN and the FBI.** While sympathy and support grew for the BPP because of Hampton and Clark's killing, fewer people joined the party and participated in their programs because of fear of similar consequences [Tr.29054-6]

G. HANRAHAN'S SECOND PRESS CONFERENCE

On December 8, HANRAHAN held a second press conference and read a prepared statement. [Tr. 2710] Although he said that "legal restirctions against pretrial publicity prevent our officers from fully answering false charges made by others in connection with this incident," he went on to give the officer's

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* The Court would not let Rush testify about this raid, although evidence of all other preceeding police raids had been admitted. [Tr. 29212-31]

** The Court allowed Rush to be questioned on cross about an interview he did at Noon of 12/4 on NBC, but would not let the entire interview in. [Tr 29555, 29687-90] See NBC interview with Bobby Rush

version of what happened, and praised them for their "remarkable restraint," "professional discipline" and "bravery." [Tr. 27103-9]

H. THE TRIBUNE EXCLUSIVE

HANRAHAN then called Chicago Tribune Editor Clayton Kirkpatrick to request that the Tribune print his officers' version of the raid, unedited and prominently displayed. [Tr. 27471] Although GROTH realized this would further prejudice the case, JALOVEC convinced him to participate [Tr. 25646], and GROTH talked to HANRAHAN before meeting the Tribune reporters. [Tr. 25655] Later that same day, December 10, the raiders were interviewed at the Civic Center by Tribune reporters Robert Wiedrich and Edward Lee, with HANRAHAN and JALOVEC present. [Tr. 27473] Wiedrich and Lee wrote GROTH's statements verbatim and also made notes on the backs of photos produced by the Defendants about what the raiders told them. [Tr.28182, 28302,8] The "Exclusive" interview appeared on the front page of the next day's Tribune, with banner headline and several photos. [PL #EH2, DG5]

On the night of December 11, HANRAHAN met Wiedrich at the Pick Congress Hotel. Wiedrich showed him copies of the Tribune article, and HANRAHAN was pleased at the speed with which the officers' stories were printed and at their prominent display. [Tr. 27487 28126]* Wiedrich testified that all his information came from interviewing HANRAHAN and the raiders, and that the captions on the photos were taken directly from notes he wrote on the backs of the photos during the interview. [Tr. 28136-8] The article itself stated that "Hanrahan and his top aides, Richard Jalovec, Chief of the Special Prosecutions Division,

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* At trial, however, the Defendants tried with much vigor to keep the interview out of evidence. After refusing to admit the Exclusive with GROTH, JALOVEC or HANRAHAN on the stand, the Court finally admitted those portions of it which were direct quotes from the Defendant, after Weidrich had testified.

and Robert Boyle, Criminal Division Chief, also made available official police photographs which they said conclusively proved the Panthers opened the battle by firing a shotgun."*

The Exclusive featured a photo which identified nails in the frame of the rear door as bullet holes. [EVH #2B], to give the impression of impact points from BPP firing at the kitchen door. Another [EVA #2A] showed a door with the caption, "Hail of lead through bathroom door in fire from opposite bedroom, according to police. This is inside view of riddled door." In reality, the bathroom door had no bullet holes in it, and the picture showed bullet holes in the bedroom door, caused by police firing from the living room. See Figure 9.

Although HANRAHAN stood 100% behind the "total accuracy of the Exclusive," [Tr. 27471], it contained many palpable falsehoods over and above the misrepresentations in the photos. The text stated that the officers were fired upon through a closed front door, and that, as GROTH and DAVIS entered the front hall they were fired upon through the living room door. [PL EVH#2]** The article went on to describe the bullet "ripping" open the door with splinters flying, and further claimed that "photographs of the door were furnished the Tribune by Hanrahan as evidence that the Panthers inside the flat fired the opening shot at his men." The article quoted GROTH as saying, "The words [supposedly calling for a ceasefire] were barely out of my mouth before the whomp of a shotgun blast from the front bedroom....The charge

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*The Court did not allow this part of the article in evidence because it was not a direct quote of one of the Defendants. [Tr. 27561]

**This was in direct conflict with what GROTH, DAVIS, JONES and GORMAN testified to at trial--that the shot was fired after DAVIS came through the hall and was entering the living room. This testimony came after ballistics expert Zimmers testified that the shot from inside the living room through the door was fired while the door was open at approximately a 45° angle. [Tr. 18791]

slammed into a bathroom door almost directly across the hall."* GROTH admitted that he told this to Weidrich [Tr. 25666-8], that he may have identified the north bedroom door in the photo as the bathroom door [Tr. 25668], and that, in reality, he saw or heard no such shots. [Tr. 25550-1]

I. THE CBS RE-ENACTMENT

The same day the Exclusive hit the newsstands, HANRAHAN "directed" the raiders to appear on a CBS-TV "re-enactment" of the raid. [Tr. 27541] He met with JALOVEC and JALOVEC talked to GROTH, who again objected but was convinced by JALOVEC to appear. [Tr. 25628] HANRAHAN asked CBS-TV to film his officers' version of the raid for television, again without editing, and they agreed. [Tr. 27542, 27550-1] At HANRAHAN's behest [Tr. 24690], JALOVEC was present at the re-enactment, and helped direct it. [Tr. 25636, 24690]

A set was built in the SAO. [Tr. 24700-24] At the filming, the officers kept going over and over their parts [Tr. 24697], and each officer was told the film could be cut as desired. [Tr. 24724] HANRAHAN was present part of the time. JALOVEC went to the CBS studios to be present while the film was edited, and stayed to watch as it was aired on Channel 2 that evening. [Tr. 24701-2]**

J. THE DECEMBER 12th PRESS CONFERENCE

On December 12, 1969, HANRAHAN held another press conference on TV. Reporters had examined the apartment and discovered that the Tribune photo

*The article then went on to refer to photos--produced by HANRAHAN--that depicted this shot; this being the north bedroom door identified as the bathroom door.

**At the trial, the TV version and outtakes were admitted "for conspiracy against the participants," which included all 14 raiders. Appellants urge the Court to view the TV re-enactment, as it shows the officers rehearsing and changing their stories. A transcription of the TV version can be found at Tr. 24416-519.

purporting to show the bathroom door in fact showed the north bedroom door, and that the "bullet holes" were in fact nail heads. HANRAHAN reacted with anger and evasiveness to their questions [Tr. 27109-17], yet stood 100% behind the accuracy of the Exclusive. HANRAHAN testified he resorted to the press conferences, the Exclusive, and the re-enactment because he was ultimately responsible for actions of the police and wished to "have the public believe police officers," and there was no other means of getting officers' stories to the public as effectively." [Tr. 27588] When asked if his duty wasn't to investigate the incident, rather than try to convince the public that the police were right, HANRAHAN said he was satisfied with the officers' stories. [Tr. 27592, 27595] Moreover, because there were black officers in the raiding party,* HANRAHAN "knew" charges that HAMPTON had been murdered "were not credible" [Tr. 27625], because it was "incredible or insulting to suggest or charge that there had been murder of black persons by black police officers." [Tr. 27629-40]**

K. THE IID INVESTIGATION

On December 12, 1969, HANRAHAN ordered Superintendent Conlisk to conduct an internal police investigation (IID). [Tr. 27864] An investigation had been started on or about December 5, but was terminated because the officers were assigned to the SAO and "we [the CPD] were not in any way directly responsible for the conduct of these police officers. They did not report to us at this time, and they worked for and were subject to the rules and regulations

*One of these was Patrolman JAMES DAVIS, whom HANRAHAN knew to have been the subject of some 67 complaints for the use of excessive force as a policeman. The jury was not allowed to learn this. [Tr. 27637]

**Of course, among those calling for the investigation and making the charges were the Afro-American Patrolman's League. [Tr. 27640]

of the State's Attorney's Office." [PL 425 (FGJ, p. 221)]*

Although Defendants HARRY ERVANIAN, a police captain who was then the Director of the IID, and Lt. ROBERT KUKOWINSKI, supervisor of the Excessive Force Unit of the IID, had always directed IID investigations [PL #419 (FGJ, pp. 180, 207)], and ERVANIAN had started the earlier one [PL #406 (FGJ, pp. 115-7)], the new investigation was personally headed by Defendant Deputy Superintendent JOHN MULCHRONE. [PL #425 (FGJ, p. 219)]** Conlisk told MULCHRONE to conduct an investigation after Conlisk's conversation with HANRAHAN. [PL #425 (FGJ, p. 221)] MULCHRONE said he told his assistant, Defendant Sgt. JOHN MEADE, a lawyer, that he wanted an impartial investigation, but MEADE replied that the investigation should not aid the survivors' defense, and that only very limited questions should be asked on two issues: "Was there a legal right to enter?" and "Was there a legal right to use deadly force?" [PL #425 (FGJ, p. 223)] MEADE prepared not only questions, but typed in answers for the raiding officers, which MULCHRONE called "the answers that we would have in order to have a justifiable use of our entrance and use of force." [PL #425 (FGJ, p. 246); PL #423 (FGJ, p. 42)]

Copies of the questions and answers were mimeographed by MEADE, with sets for the Assistant State's Attorneys (ASA) who would represent the raiders. [PL #406 (SSGJ, pp. 53-4)] MULCHRONE admitted that KUKOWINSKI would normally

*These prior statements of the Defendants were "admitted" as admissions on Plaintiffs' case, to be read to the jury when Defendants ERVANIAN and MULCHRONE took the stand in their defense. This, of course, never occurred, as ERVANIAN, MULCHRONE and all the Defendants except the shooters were dismissed as Plaintiffs presented their evidence on damages. As a result the admissions involving the persons participating in the IID investigation were never read to the jury. Plaintiffs had also attempted to call them on their case, but were prevented from doing this by the Judge's cut-off order.

**MULCHRONE was in charge of the Intelligence Division as well as the IID, and had been informed by Director Lyons of the GIU prior to December 4, 1969, that FRED HAMPTON and other BPP members were living at 2337 W. Monroe, and that the FBI had reported guns at that address. [PL #425 (FGJ, p. 63)]

handle such an investigation [PL #425 (FGJ, p. 267)], that their purpose "was not to in any way seem to later destroy [the raiders'] testimony before a criminal trial" [PL #425 (FGJ, pp. 248-9)], that the reason he [MULCHRONE] handled this case was "because of the importance...and the possible consequences in this investigation" [PL #425 (FGJ, p. 267)], and that he knew of no other IID investigation conducted like this one with questions and answers provided. [PL #425 (FGJ, p. 271)] MEADE acknowledged that he had suggested the format and procedure, including showing GROTH's two-page statement to the other raiders before they were interviewed, although he had never previously prepared questions to be used in an IID investigation. [PL #423, FGJ, p. 42)] He admitted that there were no questions designed to test the honesty of the police, because "I assumed that everything they said was true." [PL #423 (FGJ, p. 86)]

On or before December 16, 1969, HANRAHAN told JALOVEC*to be present for the questioning of the raiders, in order to inform HANRAHAN of what the officers said, since they were to be witnesses at the criminal trial. [Tr. 24772] JALOVEC told Defendant ASAs MELTREGER and SOROSKY to go to Police Headquarters on December 16, but said that he ordered them to "simply observe" the questioning of the raiders. [Tr. 24774]

In the afternoon of December 16, MULCHRONE and MEADE informed ERVANIAN that the IID would ask only very limited questions of each officer, which were: 1) "Is Groth's statement accurate?"; 2) "Did you use excessive force in effecting these arrests?"; 3) "Did other officers use excessive force?"; and 4) "Do you want to add anything?" [See PL #435-7, 439-48, DG#8] It was decided that all of the officers' statements were to "look alike." [PL #419 (FGJ, p. 207)]

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* By this time, Hanrahan had removed Jalovec from prosecuting the survivors, although he had appeared in Felony Court on December 5th on their complaints. [Tr. 24647]

ERVANIAN objected to the limited number of questions. [PL #406 (SSGJ, pp. 49-50)] He and KUKOWINSKI had seven investigators ready to take detailed statements, and when he told KUKOWINSKI about the change, KUKOWINSKI was "dismayed." [PL #406 (SSGJ, pp. 47-50)] Neither had ever been involved in a case in which persons outside the IID section had intervened [PL #406 (FGJ, p. 180), PL #419 (FGJ, p. 207)] ERVANIAN knew of no other case in which questions were given in advance, but he acquiesced in the format. [PL #406 (FGJ, pp. 180-5)]

Later that afternoon, MULCHRONE, MEADE, ERVANIAN, KUKOWINSKI, SOROSKY, MELTREGER and GROTH met at the IID office; JALOVEC arrived later. MULCHRONE, MEADE and the State's Attorneys decided on two or three questions to be asked [PL #425 (FGJ, p. 223), PL #428 (FGJ, p. 151)] The State's Attorneys were shown typed questions and answeres prepared by MEADE [PL #428 (FGJ, p. 154), PL #406 (SSGJ, p. 52)], and MEADE asked if the procedure with questions and answers was proper. SOROSKY said yes. [PL #428 (FGJ, p. 154)]

Although SOROSKY and JALOVEC insist they were present at IID only as observers, and did not represent the raiders [PL #428 (FGJ, p. 151)], the members of the CPD saw it quite differently. JALOVEC told MEADE that he would not permit his "clients" to testify any more completely than these four questions, as it would be "pure harrassment." [PL #423 (FGJ, p. 60)] Likewise, MULCHRONE said GROTH was present "with attorneys representing him." KUKOWINSKI assumed MELTREGER and SOROSKY were representing the State's Attorney's Police, because they consulted with their clients "off in a room by themselves." [PL #419 (FGJ, p. 204)] ERVANIAN said police officers met with the ASAs before the statements were taken "at a closed office at the end of the hall." [PL #406 (SSGJ, p. 50)] At least one of the raiders, LYNWOOD HARRIS, "assumed" that JALOVEC, SOROSKY and MELTREGER were representing them at the IID. [PL #410 (SSGJ, pp. 135-6)] When HARRIS was called into the room, JALOVEC went over his "story" with him,

and suggested that he add that he did not know who lived in the apartment. [PL #410 (SSGJ, pp. 133-3)] JALOVEC deleted from the proposed IID statements a passage which stated that the raiders were accompanied by counsel from the SAO. [PL #424 (SSGJ, p. 98), PL #423 (FGJ, p. 56)]

After each officer had met in the closed room at the end of the hall with JALOVEC, GROTH and SOROSKY, and been shown a copy of the questions and answers, IID personnel took "statements" from the raiders. GROTH's entire narration of the raid was as follows:

> After repeated announcing our office, advising that I had a search warrant for the premises, and attempting to gain entry, we were met with deadly fire from within. Two deaths and numerous injuries resulted, including two of my men being injured in executing this warrant. [PL # DG8, p. 3]

Following GROTH, each of the other raiders was shown his two-page statement and asked the four questions decided upon earlier. [PL #438-448]

Each of the 14 raiders answered "yes" to the first question and "no" to the next two. They gave a random selection of self-serving statements--having to do with matters other than what happened during the raid--in answer to question 4.* The statements were taken to court reporters at the SAO for transcription, and returned to the IID the next afternoon, December 17, 1969. [PL #406 (SSGJ, p. 54)] MULCHRONE told ERVANIAN he wanted the case closed that night so the Superintendent could make a public statement the next day. [PL #406 (SSGJ, p. 55]

During the days immediately before December 17, Defendant JOHN SADUNAS, who was in charge of the CPD Crime Lab's firearms identification testing on the raid evidence, had been experiencing "pressure," in the form of "almost

*Officer CARMODY's response to question 4--that he had been accused of being a murderer and also a member of the Ku Klux Klan, and that he was not a member of the KKK--was refused admission into evidence by the Judge. [See EC#2 o.p.] p.4]

daily calls" from the SAO and others, including CARMODY and CISZEWSKI, to complete his report. [PL #427. (FGJ 126-7] He had received the evidence seized at 2337 without tags showing where, when, or by whom any item was found, in violation of CPD regulations. [PL # 427 (FGJ 116] SADUNAS issued his lab report on December 17, 1969.[PL # RZ90] At the time, he had not been given any of the weapons carried by the raiders for test-firing, nor had be requested them. [PL #RZ93] The only positive identification he made in this report* was to match the two shotshells purportedly found by KOLUDROVIC (N and O) with the gun allegedly seized from BRENDA HARRIS.

SADUNAS' report was immediately sent to the IID, where it became a basis for the "exoneration" of the police, publically announced** by Conlisk on December 18th or 19th, and incorporated in a written IID report dated December 19th. Conlisk's statement gave the impression of a complete investigation. [PL #425 (FGJ, p. 259)]

By the Perpetrators' own admission, this investigation was a "whitewash" [PL #406 (FGJ, p. 174, o.p.)]*** Director ERVANIAN said he had never seen such a bad investigation. [PL #406 (FGJ, p. 177, o.p.)]**** ERVANIAN said that normally the IID would go into a lot more depth in questioning, and that the reason for the lack of thoroughness might have been because the SAO was involved. [PL #406 (FGJ, p. 167, o.p.)] He admitted that he did not discharge

*Of course, later tests by FBI expert Robert Zimmers established that these shells were fired from Defendant CISZEWSKI's gun. (supra and infra)

**MULCHRONE wrote the original statement from which Conlisk made his announcement.

***CARMODY's Firearm Use Report--which states that he "critically wounded" an occupant--was withheld from the IID, although the other raiders' Firearms Use Reports were not. KOLUDROVIC's false report of December 4, 1969, was also used as a basis for the finding.

****The Court erroneously refused to admit these two passages.

his duties properly, and that the investigation was not complete. [PL #406 (FGJ, pp. 140-1)] KUKOWINSKI agreed that the "hundreds" of investigations which he had worked on previously were done "differently," and MULCHRONE admitted that he knew of no other IID investigation in which the questions and answers were given to the persons under investigation. [PL #425 (FGJ, pp. 267, 271)]*

L. PIPER CLAIMS CREDIT FOR RAID AND SEEKS BONUS FOR O'NEAL

The Defendant ROBERT PIPER wrote a letter to the Bureau in Washington on December 11, 1969, requesting a bonus for O'NEAL for his work in setting up the December 4th raid. PIPER informed the Bureau that O'Neal had supplied a "detailed inventory" of "legally purchased weapons" allegedly kept at 2337 W. Monroe, as well as a "detailed floorplan" of the apartment, and the "identities of the BPP members who utilized the apartment," and that all this information "proved to be of tremendous value as it saved injury and possible death to the police officers participating in the raid." He wrote further that the raid was "based" on the information supplied by O'NEAL, and that "this information was not available from any other source,"** (emphasis added), and that "the chairman of the Illinois BPP, Fred Hampton, was killed," along with a "BPP leader from Peoria." [PL #83] At trial, PIPER characterized the raid as a "success." [Tr. 9529]

M. MITCHELL WRITES "ILLEGAL WEAPONS" DOCUMENT

On December 12, 1969, ROY MITCHELL wrote a memo, approved by PIPER,

*At trial both HANRAHAN and JALOVEC, not surprisingly, defended the IID "investigation [Tr. 24880-4]; their specious defense, however, is exposed by the prior admissions of KUKOWINSKI and ERVANIAN. [PL #406 (FGJ, p. 147)]

**HANRAHAN, in an interview on WBMX Radio in February 1975, which was introduced in evidence, likewise stated that the search warrant was based on information from an FBI agent, rather than a police informant. [Tr. 28063-4]

which said in writing for the first time that a sawed-off and a stolen police shotgun were among the weapons located at 2337 W. Monroe before the raid. [PL #23]* He also wrote for the first time that he had, on December 1 or 2, told the SAO of the two weapons, and recounted the communications between Defendants JOHNSON and PIPER and Capt. Lyons of the Police Intelligence Division. Like the floorplan, this memo was not sent to Washington, and was kept only in the confidential file on O'NEAL, where only JOHNSON, PIPER and MITCHELL would have access to it. [Tr. 9291-2, 7041]

N. JOHNSON OPENS A PRELIMINARY INVESTIGATION OF THE RAID

On Saturday, December 13, JOHNSON received a request from the Civil Rights Division of the Justice Department to open a preliminary FBI investigation into the December 4th incident. [Tr. 27704-5] JOHNSON called a meeting that day with Chicago agents Leonard Treviranus, his supervisor Leo Pedrotty, and John Reid, the Assistant Agent in Charge. [Tr. 27698] At this meeting, JOHNSON called Superintendent of Police Conlisk and asked him to make the raiding police officers available for interviews. Conlisk said that he had no objection to the interviews, but that the raiders were assigned to HANRAHAN. [Tr. 27710-1] JOHNSON then called HANRAHAN, informed him of the investigation, and requested interviews. HANRAHAN said he would make the officers available if a member of the SAO could be present, and if he could have copies of any statements or reports. [Tr. 7715-6] JOHNSON then called one of the lawyers

*On November 21, MITCHELL had written that all of the weapons said to be in the apartment were "legally purchased"; in several other documents he made no mention of two illegal weapons (the stolen police shotgun and the sawed-off shotgun), and in a document dated December 3 stated that the weapons were legally purchased. [PL #61] On December 11, PIPER had also written that the weapons were "legally purchased." [PL #83]

who represented the BPP survivors, and requested interviews with the survivors and inspection of the apartment. The lawyer later conveyed that the survivors declined the request. [Tr. 29831-2, 29842, 29852]

O. FEDERAL GRAND JURY IS CONVENED TO INVESTIGATE THE RAID

After making these phone calls, JOHNSON recommended a Grand Jury investigation. [Tr. 5325] The Justice Department concurred, and on December 18, JOHNSON and Treviranus were informed that a Federal Grand Jury (FGJ) would be impanelled. [Tr. 27722] Jerris Leonard, Chief of the Civil Rights Division (and a director of a secret interdepartmental intelligence gathering operation) [PL #420 (Dep., pp. 10-13]* was chosen by Attorney General John Mitchell** to head the team which would present evidence to this Grand Jury. [Tr. 27723-4] This FGJ, whose duties it was to investigate whether the occupants' civil rights had been violated on December 4, 1969, was impanelled on December 21. [Tr. 5325] On December 22, Treviranus was named case agent for the FGJ. [Tr. 27739] JOHNSON received detailed written instructions from Leonard on the 22nd concerning JOHNSON and his FBI subordinates' duties in the FGJ investigation. [PL #CLT1] JOHNSON then orally instructed Treviranus as to his duties as case agent of the FGJ. [Treviranus : Dep., 104-5]***All requests for evidence from Leonard and the FGJ were to be made through JOHNSON [Tr.5334], and throughout the investigation JOHNSON would meet privately with Leonard who would "instruct" him on what evidence he was seeking. [Tr. 5197]

*This unit was called the Special Disturbances Group, which had representatives from the CIA, FBI, Justice Department, and others, and was assigned to gather intelligence on "ghetto conditions and disturbances." See Rockefeller Report, pp. 116-125.

**Both Leonard and John Mitchell, as well as several other Justice Department and FBI officials, are named as unsued co-conspirators in various counts of the Complaint. After certain discoveries and revelations, the Plaintiffs attempted to join them as defendants, but the Court denied the motion. [See Motion to Join, filed 12/31/75]

***Certain portions of Treviranus' deposition were admitted, because his testimony was cut short by a trip to Europe.

P. THE FBI REWARDS O'NEAL FOR HIS ROLE IN THE RAID

On December 17, the Bureau, in a letter to SAC Chicago, approved PIPER's request for a $300 bonus to O'NEAL. On December 18, PIPER approved a report of Racial Matters Agent Alan Stephens to Washington which said the raid resulted from O'NEAL's information that there were weapons at 2337 W. Monroe. [PL #94] The Bureau's approval of the $300 bonus was routed to MITCHELL, and on December 23, MITCHELL obtained the money. [PL #84, 85]

Q. DEFENDANTS PRESENT FALSE TESTIMONY TO CORONER'S INQUEST

In late December 1969, a "blue ribbon" Coroner's Inquest was convened by Coroner Andrew Toman, and sworn public testimony was taken from the raiders and others, including JOHN SADUNAS and GEORGE KOLUDROVIC. DANIEL GROTH appeared before the Special Coroner and denied under oath that he had met with HANRAHAN prior to the raid, that he had known the layout of the interior of the apartment, and that he knew or suspected that FRED HAMPTON would be in the apartment. [Tr. 25497-502, 25511-14, 25525-30] (All three of these assertions are proven to be false by GROTH's subsequent admissions at deposition and trial, supra.) Additionally, the other officers swore to their versions of the raid, and SADUNAS reiterated his finding that two shotshells matched with the gun that GORMAN placed in BRENDA HARRIS' hand.

R. THE SURVIVORS ARE INDICTED

In late January, the Cook County Grand Jury, after having heard the police officers' version of the raid and SADUNAS' December 17 "findings" [Tr. 27977, 25757], returned an indictment for attempted murder and aggravated battery against the seven surviving victims of the raid. The indictment, according to HANRAHAN, was based largely on the false report of SADUNAS.

[Tr. 29716-26]* HANRAHAN admitted that he was responsible for the presentation of evidence to the Grand Jury [Tr. 27651], and continued to supervise the prosecutions, although there had been demands for a Special Prosecutor since early in December. [Tr. 27110-11]

S. THE FEDERAL GRAND JURY HEARS EVIDENCE

1. Johnson Continues to Head FBI Grand Jury Investigation

During January and February 1970, the FGJ was also hearing evidence. JOHNSON continued to supervise the FBI's work gathering evidence, and in late January received to his personal attention two sets of detailed instructions from Jerris Leonard concerning ballistics, blood and drug tests to be performed on physical evidence. [PL #CLT 1, 2] At a meeting on February 4, Leonard requested much information from JOHNSON, including the activities of FRED HAMPTON the week before his death, to review all Racial Matters files for all references to the survivors and supply that information to the FGJ, and to check on drugs found in the apartment and the origin of all BPP weapons. [PL #304, para. 1, 5-11] JOHNSON continued to meet with Leonard, and Leonard informed him as to how various phases of the FGJ inquiry were coming. [Tr. 5338]

2. Johnson Testifies Before the FGJ

a. Briefing. In early February, Leonard requested that JOHNSON appear before the FGJ, assuring the Bureau there "would be no fear of exposure" of the Bureau since his testimony would not relate to the "circumstances" of this case. [PL #139] Leonard further requested that an agent of the Racial Matters Squad also be permitted to provide the FGJ with "background" (i.e., intelligence information) about the BPP. [PL #319] Leonard told JOHNSON that

*This statement by Hanrahan was refused in evidence both as impeachment and later as an admission. [PL #409 (FGJ, p. 62)]

he and the FGJ were interested in information which had been supplied by his office to local authorities. [Tr. 5337]

JOHNSON asked a member of his staff to brief him concerning dissemination of information to local authorities, prior to his testimony in front of the FGJ. [Tr. 5102] JOHNSON knew that MITCHELL had disseminated the information to local authorities concerning 2337 W. Monroe, but did not ask MITCHELL to brief him [Tr. 5102], and said he could not remember who did brief him, but he "hoped" that he had obtained all of the pertinent information. [Tr. 5114] According to ROBERT PIPER, JOHNSON had a conversation with him a "few days" prior to JOHNSON's appearance before the FGJ [Tr. 9735-6], and told him he wanted an agent with him to give background information on the BPP, and they selected Alan Stephens. [Tr. 9737, 11419-20] PIPER could not recall any discussion of MITCHELL's supplying of the floorplan and other information to JALOVEC, and said JOHNSON did not ask any questions concerning this "dissemination" to the SAO. [Tr. 9737-44]

b. Johnson Conceals the Floorplan and Illegal Weapons Memo from the FGJ. MARLIN JOHNSON testified before the FGJ on February 11, 1970. He told the Jury that a "source" had informed the FBI on November 21 that a "cache" of weapons was located at 2337 W. Monroe and that this information was disseminated to the SAO and the CPD. [PL #414 (FGJ, pp. 119-21), o.p.]* JOHNSON admitted at trial that he might have had PL #22 in front of him or been briefed with it beforehand. [Tr. 4993-5001] He told the FGJ that they had determined that there were no federal violations**--before they disseminated the information to local authorities. [PL #414 (FGJ, pp. 117-18, 123] He went on to testify

*He listed the weapons and the members who frequented the apartment in his testimony. [PL #414 (FGJ, pp. 120-1]

**JOHNSON testified at trial that "whoever briefed him" had told him that there were no federal violations. [Tr. 5233-4]

concerning his call to Lyons on the 24th, PIPER's call to Lyons on December 1, and the information that the weapons were moved in and out of 2337 W. Monroe. [PL #414 (FGJ, p. 119-27)] JOHNSON's testimony was the same, word for word, as MITCHELL's December 12th memo--except he did not recite the two-line paragraph which said that a sawed-off shotgun and stolen police gun were located at 2337 W. Monroe. [PL #414 (FGJ, pp. 119-20)]* He went on to affirmatively state that they did not know that there was a sawed-off shotgun at 2337 W. Monroe, and if they knew that they "would have turned it over to another federal agency--probably the Alcohol-Tax Unit," who "would have had responsibility for the Federal Firearms Act." [PL #414 (FGJ, pp. 123-4)] Additionally, JOHNSON made no mention that the floorplan had been supplied to the SAO, although he was discussing the information which was disseminated to the SAO. [See PL #414, generally]**

3. Mitchell Claims Credit for the Raid

On the very day that JOHNSON testified before the FGJ, ROY MITCHELL, writing for SAC Chicago, sought authority to continue O'NEAL's payments at $575 per month. In this "justification letter," MITCHELL wrote that O'NEAL "provided detailed floorplans of this apartment and identities of BPP members generally utilizing the apartment, which subsequently saved injury and possible death to police officers participating in a raid at the address and resulted in a quantity of weapons and ammunition being recovered, seven BPP members arrested." [PL #91, p. 6]

*JOHNSON steadfastly denied at trial that he had seen PL #23 or had it in front of him at the FGJ. [Tr. 5003-23, 5237-43, 5254-6, 5192-6]

**The Judge would not allow JOHNSON's FGJ testimony--with the exception of one portion which he struck--despite its being repeatedly offered as impeachment by omission, a statement of a co-conspirator in furtherance of the conspiracy, and as a prior admission. [See Tr. 5123, 5130-46, 11676-96; PL #414, Order of 4/5/77]

4. The Counterintelligence Program Continues

Both O'NEAL and the counterintelligence program continued unabated during this period. In January, O'NEAL reported that the BPP was going to announce the results of an independent autopsy and toxicology report which showed a substantial amount of secobarbital present in HAMPTON's system. [PL #137, o.p.]* The next week O'NEAL reported to MITCHELL on the press conference announcing the pathologist's findings, and the BPP's claim that this confirmed that HAMPTON was asleep when killed. [PL #124, o.p.] MITCHELL reported this to Bureau Headquarters. O'NEAL continued to encourage criminal activities and engage in acts of solicitation and provocation of crime (supra); and to circulate rumors that Plaintiff TRUELOCK was the informant who set up the raid and drugged HAMPTON (supra).

In December PIPER and MITCHELL were instructed to monitor a bank account which the BPP had opened to deposit monies collected for the defense of the survivors of the raid. [PL #112] O'NEAL attended legal meetings of the survivors' defense. [Tr.22462-3]** Prior to the raid, the Defendants had been instructed to supply to the Bureau appropriate information for placement in the media to counter BPP charges of police and government harrassment [PL #100]; and such subordination of the press for FBI propaganda purposes was, of course, a basic tactic of the counterintelligence program. [See PL #1, 2, 106, 107, etc.] After the raid, this program was accelerated, with JOHNSON's approval,

*The Court refused admission of this document as "cluttering up record" [PL # 123] and later expressly excised the part of the document having to do with drugs.

**Surveillance and wiretap by FBI Defendants of the attorneys representing the survivors, both as defendants and plaintiffs, was established through evidence introduced at trial. [See supra, and PL #321] Counterintelligence actions were also planned against lawyers representing BPP members. [See: Report, Senate Select Committee on Intelligence, p. 212] The Court, however, would not order production of the FBI's files on the attorneys. (See order of 5/13/76)

in large part to counteract the "public sympathy" towards the BPP generated as a reaction to the December 4th raid--as well as a December 8th police raid* and shootout in Los Angeles. [PL #303, 104]** MITCHELL was instructed to have O'NEAL obtain copies of a videotape of FRED HAMPTON and a film that was being made on HAMPTON's life. [PL #337, 334] Additionally, PIPER advised the Bureau that they would increase surveillance on the BPP free medical clinic [PL #109] and approved counterintelligence operations to disrupt the BPP newspaper and to provoke strife between the BPP and the Nation of Islam. [PL #41, 345]

5. The Racial Matters Squad Supplies BPP Intelligence Information to the FGJ.

Although PIPER swore he had no connection with the FGJ investigation [Tr. 9730-2], he and his Racial Matters Squad had been regularly supplying Treviranus, the Bureau's case agent for the Grand Jury investigation, with selective intelligence information on the BPP and the raid. In late December, Treviranus received detailed information from the Racial Matters Squad concerning a hearing held by nine black Congressmen on the facts of the raid [PL #127, o.p.], the appearance of the survivors at the Coroner's Inquest [PL #116] and the BPP press conference on HAMPTON's drugging.*** While the preliminary investigation had been in progress, PIPER informed Washington in a memo that the BPP charged that the FBI was involved in the December 4th raid.**** He also wrote

*It has later become public that the FBI also secretly set up this raid [See New Times Magazine, 10/'77]

**Among the ways this was accomplished by PIPER and MITCHELL was to send information to Washington claiming HAMPTON fired at police [PL #3], repeatedly stating that the raid was a "gun battle" [PL 83, 88], and stating that SATCHEL, who was nearly killed, "was slightly wounded." [PL #88]

***PIPER expressly approved of the latter communication.

****PIPER also informed the Bureau of the progress of the investigation. He claimed, however, that he did not write that part of the document. [Tr.10443-6] This was the only document introduced which was in any part disclaimed by the author whose name or initials appeared.

or approved of two documents under that heading which recounted the survivors' testimony before the FGJ, and HANRAHAN's reaction to the report. [PL #333, 126, o.p.] The Racial Matters Squad had provided the Grand Jury with Bureau files on the survivors, details on FRED HAMPTON's whereabouts the week before the raid, and the November 21st weapons memo (PL #21) which listed the "legally purchased weapons" which O'NEAL reported were in the apartment at 2337 W. Monroe. [Tr. 27811, 27816]

Despite this great flow of information, however, the floorplan (PL #21) was never revealed to Treviranus or the FGJ; nor was any information of MITCHELL's (PL #23) concerning the sawed-off shotgun or the stolen police gun. [Tr. 5200, 27816]* Neither MITCHELL nor PIPER testified before the FGJ, or were even interviewed by Treviranus or the FGJ's Justice Department lawyers. [Tr. 5573-4], although one of Treviranus' functions was to interview witnesses. O'NEAL was never made available for testimony or interview, although JOHNSON, PIPER and MITCHELL were under general instructions from Headquarters to convince informants to testify in front of any Grand Jury which was investigating the BPP. [PL #344] Not surprisingly, the FGJ heard nothing at all about the counterintelligence program or the wiretap on the BPP office. [Tr. 5573-4]

T. SADUNAS RECEIVES THE POLICE WEAPONS

SADUNAS had hurried his report out on December 17th "for the State's Attorney's Office" [PL #RZ98, o.p.], without having access to the police weapons, or having tested them. On January 15, SADUNAS received

*When O'NEAL testified at his first deposition, in January 1974, he denied that he had given a floorplan; this was before the floorplan was produced in April of 1974. [Tr.23155-6] Similarly, not only did JOHNSON fail to tell the FGJ about the sawed-off and stolen police guns, but MITCHELL did also, when directly questioned in late 1971 in front of the Special State Grand Jury (SSGJ). [Tr. 7065-9; PL #422 (SSGJ, o.p.)] This, of course, was before the December 12 memo was produced in April of 1974.

for the first time from the SAO the machine gun and three of the shotguns used by the raiders. [PL # RZ93, p. 4] On January 22, Defendant CIZEWSKI turned over to him the personal long weapons carried by the Defendants on the raid--including the shotgun carried by CIZEWSKI. [PL # RZ93, p. 4]* (The weapon that actually fired the two shotshells--N and O--which SADUNAS had erroneously attributed to BRENDA HARRIS.) This turnover was after the IID report, after SADUNAS' testimony before the Coroner's Inquest, and after his report was presented to the Cook County Grand Jury. SADUNAS had the ballistics evidence gathered at the apartment in his possession until the 27th of January, and the police weapons until February 3, when they were turned over to the FBI and the FGJ for testing. [PL #RZ93, p. 4]

Yet SADUNAS made no attempt to compare test firings from the police weapons with the ballistics evidence collected at the apartment during the time he had both the weapons and the evidence. [PL #RZ93]

U. FIREARMS EXPERT ZIMMERS DISCOVERS SADUNAS' MISIDENTIFICATION

1. Johnson and Sadunas are Informed

During early February, FBI firearms expert Robert Zimmers ran exhaustive tests on all the ballistics evidence seized and all the weapons, both police and BPP, which were connected with the raid. [Tr.19804] Around the 10th of February, Zimmers discovered that the shotshells N and O had been fired from CIZEWSKI's weapon, "beyond reasonable doubt,"** and he called MARLIN JOHNSON, with whom he had been in almost daily contact concerning the progress of

*The handguns carried by the Defendant raiders were turned over to SADUNAS on the 29th of January by CARMODY. [PL #RZ93, p. 5]

**Zimmers, who was perhaps the premier firearms man in the country, testified that making such a matching or positive identification is a scientific process, as the markings and patterns on the shell (a bullet) must match test-fired bullets under a microscope so perfectly that the examiner is absolutely certain they are the same. [Tr. 20386, 20410]

his testing. [Tr. 19705] Zimmers and JOHNSON determined that Zimmers would inform SADUNAS of this discrepancy "as professional courtesy," and JOHNSON contacted SADUNAS, who in turn called Zimmers. [Tr. 19708-10] Zimmers then informed SADUNAS of the discrepancy sometime in mid-February. Zimmers testified that there were "no similarities whatsoever" between the shotshells N and O and the alleged BRENDA HARRIS weapon, and that he had never seen a similar mistake made by someone of SADUNAS' experience. [Tr. 20384]

2. Sadunas Finally Tests the Police Weapons and Admits His Mistake

Although SADUNAS received the weapons and evidence back from the FBI on February 27, he did not compare the testfirings from CIZEWSKI's gun with shotshells N and O until March 4. [PL #RZ93, p. 6] SADUNAS himself admits that at lease one of the reasons that he retested N and O was because of his conversation with Zimmers. [PL #RZ98, o.p.]* In March 1970, SADUNAS appeared before the FGJ and admitted that he had erred in identifying N and O with BRENDA HARRIS and confirmed Zimmers' finding that the shells were fired from CIZEWSKI's weapon. [PL 427 (FGJ, p. 103, admitted 4/5/77)] He further admitted that if his misidentification had not been corrected by Zimmers, seven people would have been convicted of attempted murder. [PL #427 (FGJ, p. 133)]

V. THE FGJ STAFF ASKS THE SAO TO IDENTIFY GROTH'S INFORMANT

Also in early February, Jerris Leonard's first assistant, James Turner, met with HANRAHAN's first assistant, James Murray, and others from Murray's

*Further evidence that the Defendants meant SADUNAS' December 17th report to be a final rather than preliminary report (as the Defendants now contend) includes the fact that he filed two "supplementary" reports on January 2 and 9, 1970 [PL #RZ 91-2], and that the December 17 report nowhere indicates that it is preliminary.

**SADUNAS was not called by the Defense to testify at trial to explain his so-called "mistake" nor did (or could) the Defense call any ballistics or firearms expert to dispute the findings of Zimmers.

staff. A memorandum of this meeting was made by Turner, and a copy sent to Treviranus and filed in the FBI's files. [PL #312, 312A] During the meeting, Turner made some seventeen requests for evidentiary material from HANRAHAN's assistants (listed in PL #312A). Among those requests were for all memorandums containing information (and its source) that weapons were located at 2337 W. Monroe. [PL #312A, para. 7] Turner also requested all records of HAMPTON's movements and surveillance of HAMPTON by the SAO. [PL #312A, para. 6] Although GROTH has testified that he had made written memos containing the information that his purported informant told him about HAMPTON and weapons at 2337 W. Monroe, and further that this information was in his files in February of 1970 [Tr. 24997-25004, 25161], the SAO told Turner that they had no such records. [PL #312, para. 6 and 7]* Additionally, Turner requested the identity and "testimonial ability" of any informant who gave information to the State's Attorney's Police or the CPD concerning the apartment. [PL #312A, para. 6] In response to this, the SAO informed Turner that "Jalovec was informed by a Federal Employee; Groth may consider course of action if asked before the Grand Jury." [PL #312, para. 16]

W. HANRAHAN IS INFORMED OF SADUNAS' "MISTAKE"

HANRAHAN, by his own admission, learned "in early March" that Zimmers and SADUNAS differed concerning shotshells N and O. [Tr. 27915-6, 29725], and that SADUNAS misidentified shotshells N and O, according to Zimmers. [Tr. 27915-6]** HANRAHAN was "stunned" by this information, which, according to him,

*GROTH further admitted that he burned the files at the Stickney dump in mid-1970. [Tr. 24997-25004]

**In all probability, HANRAHAN was informed of it in February, either by JOHNSON or SADUNAS.

first caused him to doubt the police officers' story. [PL #409 (SSGJ, pp. 111-13)]* He then called the police officers in and told them of the report. They discussed SADUNAS' error and he asked them if they wanted to "make a further statement." [Tr. 25760-6, 27952] HANRAHAN then met with Chief Judge Campbell--MARLIN JOHNSON, Thomas Foran, Leonard and Turner may have been there**--and was informed that only one shot had been fired by the BPP, and further informed that he could see Zimmers' report, the model of the apartment depicting the bullet holes, chart of ballistics evidence, and SADUNAS' and Zimmers' testimony. [Tr. 28027-34] At this time HANRAHAN's dismissal of the indictments was first discussed. [Tr. 28036]***

On March 12, the FGJ was recessed for three weeks. It had heard the testimony of Zimmers, SADUNAS and JALOVEC, but had not heard from the raiders who fired their weapons, or HANRAHAN. [PL #311; Tr. 27745, 27797; see also dates of FGJ testimony of Defendants introduced.]

X. HANRAHAN AND LEONARD STRIKE A "DEAL"

During this time period (early 1970), HANRAHAN had several discussions with Leonard. [Tr. 27980] HANRAHAN, the raiders, and certain other police officials were targets of the FGJ, according to Leonard; and at a meeting in early April, Leonard discussed the possibility of HANRAHAN's indictment. [PL #420 (dep., pp. 88, 131)] On at least one occasion, Leonard discussed

*At trial, HANRAHAN testified that he had never doubted the police story once. [PL #409 (SSSJ, pp. 111-13; denied admission both as impeachment [Tr. 27948] and as an admission 4/4-5/77)]

**HANRAHAN sets this meeting in early 1970 [Tr. 28027-34], and from his FGJ testimony, it appears to be in March. [Tr. 28036].

***HANRAHAN confirms that he was considering dismissal of the indictment but claims he could not act until he got SADUNAS' "final" report of April 28, 1970. [Tr. 28025-6]

potential indictments with JOHNSON. [Tr. 5339] On April 7, Treviranus had a dsicussion with JOHNSON, who informed him of a conversation he had just had with Leonard. [Tr. 27780-6] JOHNSON instructed Treviranus to immediately inform Headquarters by memo of the discussion between Leonard and JOHNSON. [Tr. 27789] The memo, dated April 8, 1970, read:

> AAG Jerris Leonard, Civil Rights Division, Department of Justice, at Chicago, advised SAC Marlin Johnson in strictest confidence that no indictments of police officers are planned in captioned matter. AAG Leonard has a firm commitment to meet with Edward V. Hanrahan, State's Attorney, Cook County, Illinois, within one week, whereupon, on basis of Federal District Court order Hanrahan will receive testimony of State's Attorney's Police before FGJ.
>
> The above is based upon an agreement whereby Hanrahan will dismiss the local indictments against the BPP members. Hanrahan is to be given thirty days to dismiss the local indictment which will be based upon the change of testimony of John Sidunas [sic] of the Chicago Police Department Crime Lab.
>
> Subsequent to this dismissal, BPP victims will then be subpoenaed before the FGJ for their testimony in this case.*

Enclosed with this memo was a copy of the index of the Grand Jury's Report, complete with a draft of the first chapter. [PL #24, pp. 1, 3-16]

Y. THE DEFENDANTS TESTIFY BEFORE THE FGJ

On April 8, GROTH and the other police officers began their testimony

*PL #24 was offered first with Defendant JOHNSON and refused [Tr. 5340-72], although the Court, as was its practice, broadly hinted that he would admit it later. It was reoffered with Treviranus, and again denied. [Tr. 27745-77] Treviranus testified concerning the conversation memorialized in the document, stating Leonard said "in his opinion" the Fgrand Jury was not planning indictments--as there was insufficient evidence--and that there was arrangement between Leonard and HANRAHAN whereby HANRAHAN would get police testimony and HANRAHAN would drop indictments against survivors, and hopefully the survivors would testify. [Tr. 27780-2, 27785-6] He denied that JOHNSON told him about the dismissal being based on a change in SADUNAS' testimony. [Tr. 27791-3] The Court would not allow JOHNSON to be asked about this conversation [Tr. 5339-72], and although he promised that he could be recalled if the document was admitted, of course this was not permitted. [Tr. 5372]

before the FGJ. They refused to conform their testimony to the ballistics evidence, although they were requested to by the FGJ staff. [Tr. 27952]* GROTH was not asked the identity of his informant in front of the FGJ; in fact, Leonard expressly told GROTH that he should not reveal this information. [PL #408 (FGJ, pp. 19-20, o.p.)]**

Z. HANRAHAN AGAIN MEETS WITH JOHNSON AND LEONARD

Within a week of April 8, HANRAHAN met with Treviranus, JOHNSON, Leonard and William O'Connor.*** At this meeting O'Connor demonstrated all of the trajectories of bullets on the scale model of the apartment, for HANRAHAN's benefit. [Tr. 27797-803, o.p.]**** On May 4, HANRAHAN appeared before the FGJ. HANRAHAN informed Mr. Turner and the FGJ that he could not comply with their deadline, which was but a few days away, and sought at least a two- to three-week extension before he dismissed the indictments. [Tr. 28021-4] Apparently he was expected originally to dismiss the indictments by March 30. [Tr. 28036] He informed the FGJ that he did intend to dismiss the indictments, based on SADUNAS' report. [PL #408 (FGJ, p. 62)] He then exhorted them to absolve himself and the police officers of any liability. [PL #408 (FGJ, p. 64, o.p.)]

*The request for the officers to conform their testimony was made earlier, and they were shown the scale model by the FGJ attorneys, who pointed out how their stories were highly improbable given the ballistics evidence. [Tr. 28036]

**Milton Branch, one of the FGJ prosecutors, was not allowed to testify because of the Judge's cut-off order. If called, he would have testified that the FGJ proceedings, in his opinion at that time was a coverup, and the questioning of the officers confirmed that to him.

***O'Connor, like Turner, was an unsued co-conspirator whom the Plaintiffs attempted to join in late 1975.

****The Court would not allow this before the jury "because it was lawyers' opinions." [Tr. 27803]

AA. HANRAHAN DROPS THE INDICTMENTS AGAINST THE SURVIVORS

After meeting with Turner afer the FGJ May 4th session, HANRAHAN returned the next day and promised the FGJ that he would dismiss the indictment. [Tr. 28043]* HANRAHAN dismissed the indictments on May 8 [Tr. 27804], the survivors were subpoenaed to testify on May 11, and on May 12 and 13 they refused to testify. [PL #333] On May 15, the FGJ finished its work, and the staff issued a 125-page report,** returned no indictments [PL #126, o.p.], and disingeneously blamed their failure on the survivors' refusal to testify.***

BB. THE CONSPIRACY CONTINUES: POST-1973 COVERUP

After O'NEAL's identity as an FBI informant was revealed in 1973, a new page of the coverup unfolded. The newly-exposed federal Defendants enlisted their lawyers and ultimately the District Judge in their renewed campaign to keep their true role in the December 4th raid suppressed. This coverup included pretrial efforts to suppress counterintelligence documents crucial to the Plaintiffs' case, to shield O'NEAL from service as a Defendant, to suppress numerous inculpatory documents, to prevent the revelation of GROTH's purported informant, and forstall the exposure of the FGJ coverup. This coverup featured the involvement of the District Court at every crucial stage, rubber stamping their obstructionism and indeed willfully suppressing evidence

*At trial, HANRAHAN gave as his reason for changing his mind overnight that he wanted the survivors to have every opportunity to testify--although he himself had told the FGJ that in his opinion they would not testify. [Tr. 28023, 28043-4]

**The Court would not allow any mention of the report at trial. However, it is mentioned indirectly in exhibits and is of record in this case, so this Court should take judicial notice of it.

***The decision not to indict had been made at least a month before the survivors were subpoenaed to testify, and the BPP was scapegoated to hide the deal between HANRAHAN and the FGJ staff--a deal which saved HANRAHAN and the raiders from indictment while neatly keeping the FBI role secret, even from the FGJ.

which would truly hoist the Defendants on their own petard. [For a more complete treatment of this history, see Parts FOUR and FIVE below.]

Other aspects of this coverup, however, were offered in evidence. In 1975, when O'NEAL was finally produced for service as a Defendant, he was immediately given a $1080 monthly stipend by the government, which continued through the trial. [Tr. 21012] The only service that O'NEAL said he had to perform for this fee was to testify at the trial. [Tr. 21013] For the five months prior to O'NEAL's trial testimony, he received an additional $1500 per month--over the signature of Arnold Kanter--purportedly for travel expenses. [Tr. 23308-15, PL #27-43] During the early stages of the trial, O'NEAL contacted two of his former BPP confederates--Nathaniel Junior and Robert Bruce--and inquired if they were going to testify at the trial. [Tr. 28484-6] In April he visited them and told them not to mention "the burglaries" if they testified. [Tr. 28499-502] Two days later he reported back to Kanter and gave MITCHELL (who "happened" to be in Kanter's office) a "big hello." [Tr.8564-8] After his first day on the stand in late November, O'NEAL again called Bruce and again told him that he and Junior should not mention their prior illegal activities or the April visit if they testified. [Tr. 28502-8] Two weeks later, Bruce was visited at the office where he worked by State Defense counsel John Coghlan, and special police assistant Michael Connelly, who told him that he could get into "a lot of trouble" if he testified. [Tr. 28508-13] Frightened for his family and his job, Bruce assured them he did not intend to testify. During the middle of his testimony, O'NEAL mysteriously disappeared without warning, but the Court barred inquiry into this disappearance. O'NEAL contradicted his prior excuse for leaving and it began to seem obvious that he was simply holding out for more money. [Tr. 23316]

During the trial, the Defendants and their lawyers participated in massive obstruction and coverup. The Defendants stonewalled and were repeatedly evasive, recalling almost nothing. They were aided and abetted by repeated objections by their lawyers and the "rulings" of the Trial Court. [See Part FIVE, infra.] Defendant MITCHELL "forgot" a recent three-day meeting with Kanter and O'NEAL, and only avoided perjury by "correcting" his testimony at the next court session. [Tr. 6440-77] Defendants PIPER and MITCHELL combined with their attorneys to suppress at trial over 90% of the documentary evidence that the Court had ordered produced--evidence which held the key to their culpability.* [See Part FOUR, below.] Furthermore, much additional evidence of these Defendants and their conspirators still remains outside of this record, secreted within the vast files of the government, because of the concerted efforts of the Defendants, their attorneys, and the District Judge--evidence which rightfully must be produced by the Defendants upon retrial.

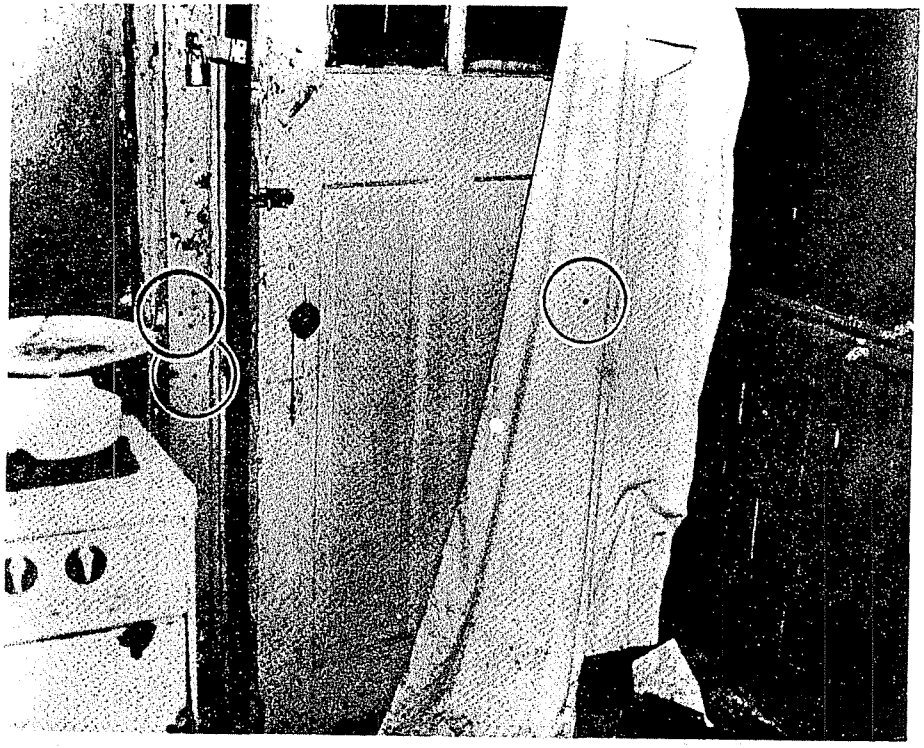
FIGURE 9 FOLLOWS

*Although the Plaintiffs were permitted to question MITCHELL in front of the jury concerning this suppression, the Court would not allow PIPER to be so examined, nor were the Plaintiffs allowed to call or question Attorney Kanter, his associates, or FBI agents involved in the suppression.

PLAINTIFF'S EXHIBIT EH#2

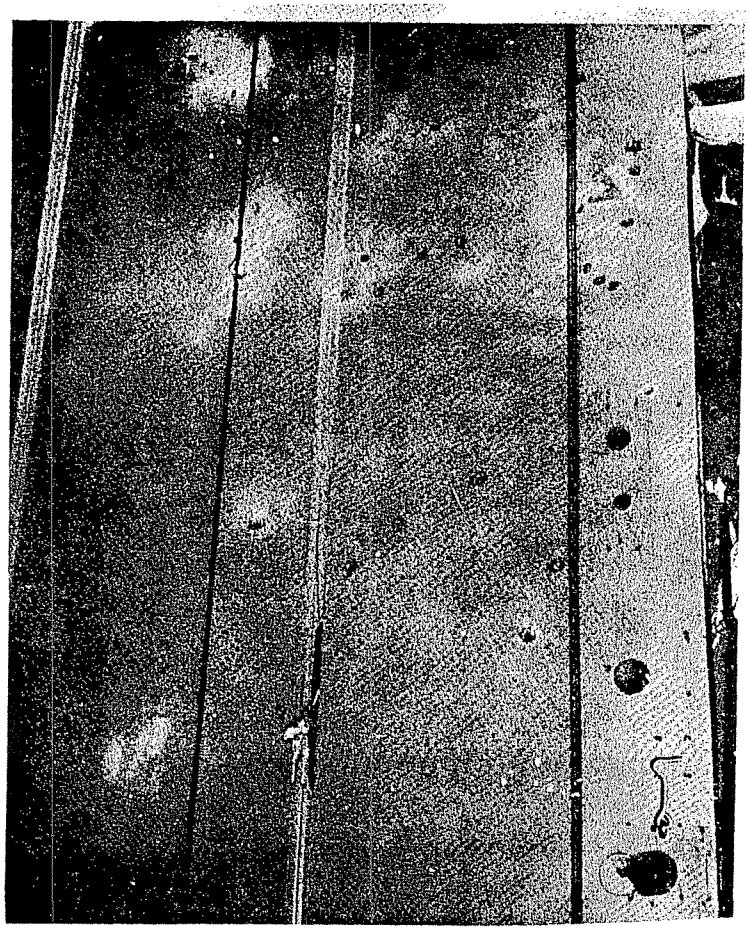
EXCLUSIVE

Hanrahan, Police Tell Panther Story



Kitchen in flat at 2337 Monroe st., where Black Panthers fired thru door [bullet holes circled] at state's attorney policemen on back porch. State's Atty. Edward Hanrahan released pictures to the Tribune showing that bullets were fired from inside the secret headquarters of Black Panthers. Police arrived at flat with search warrant issued on report that a cache of weapons was hidden in apartment. *(Story on page 1)*

FIG. 9A:TRIBUNE PHOTO FROM SAO DEPICTING NAILHEADS AS BULLET HOLES



Hail of lead tore thru bathroom door in fire from opposite bedroom, according to police. This is inside view of riddled door.

FIG.9B: TRIBUNE PHOTO FROM SAO DEPICTING INSIDE OF NORTH BEDROOM DOOR AS BATHROOM DOOR

Fig # 2

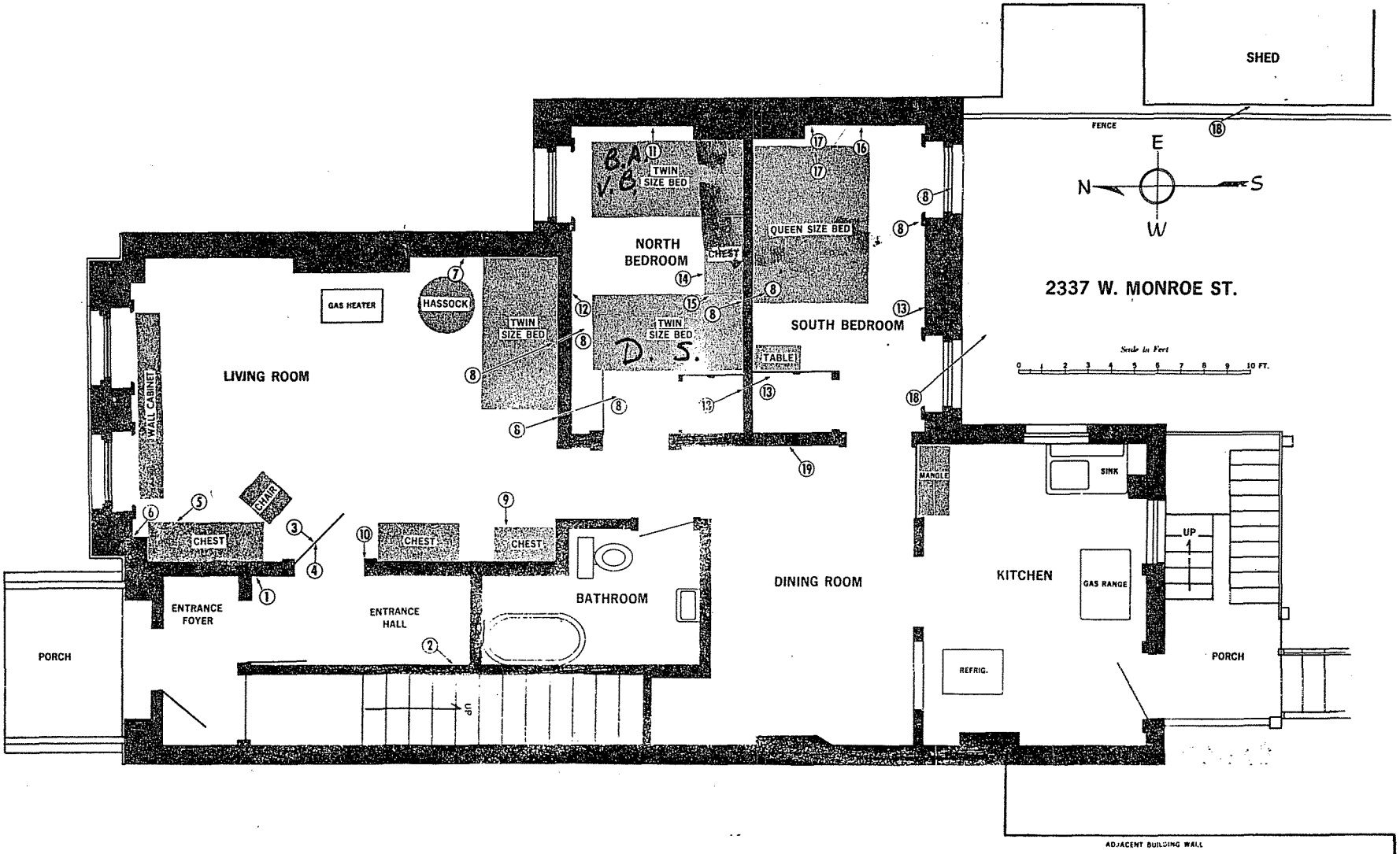

SHED
FENCE
E
N
S
W
2337 W. MONROE ST.
B.A.
V.G.
TWIN SIZE BED
NORTH BEDROOM
CHEST
QUEEN SIZE BED
SOUTH BEDROOM
D. S.
TABLE
GAS HEATER
HASSOCK
TWIN SIZE BED
LIVING ROOM
WALL CABINET
CHAIR
CHEST
CHEST
CHEST
ENTRANCE FOYER
ENTRANCE HALL
BATHROOM
DINING ROOM
KITCHEN
MANGLE
SINK
GAS RANGE
UP
REFRIG.
PORCH
PORCH
up
Scale in Feet
0 1 2 3 4 5 6 7 8 9 10 FT.
ADJACENT BUILDING WALL

FIGURE 3: FRONT OF APARTMENT

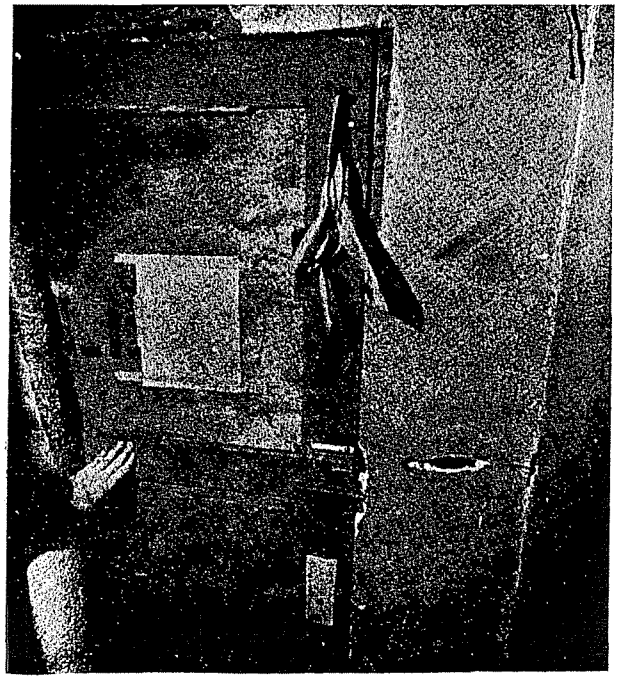


FIG.3A FRONT MIDDLE DOOR WITH JONES' SHOTGUN BLAST IN ENTRANCE HALL

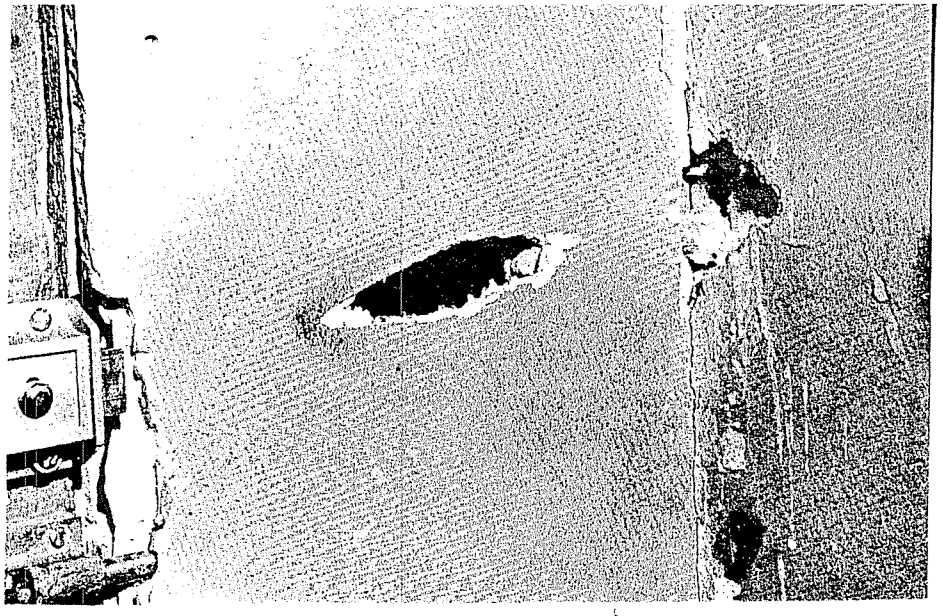
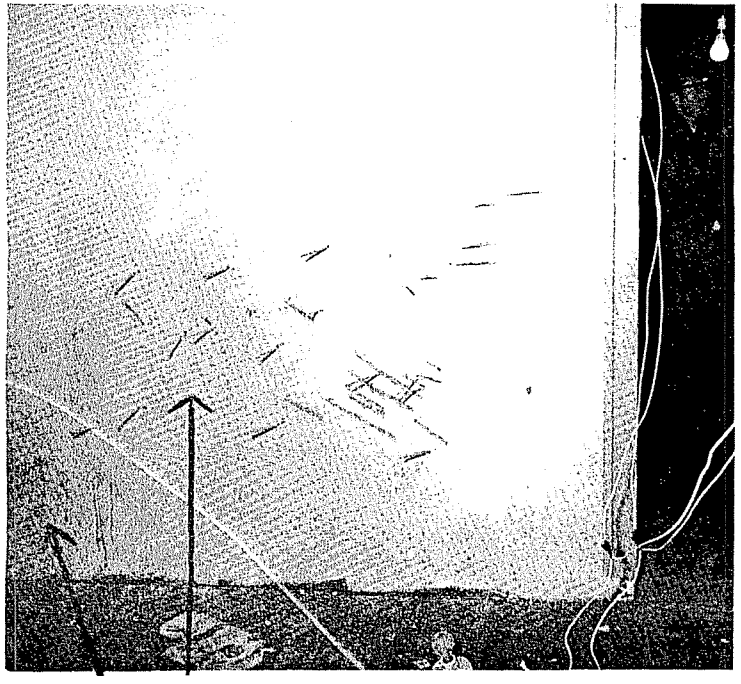


FIG.3B:CLOSEUP OF JONES' SHOT AND LOCK BROKEN BY RAIDING POLICE



FI' SOUTH WALL OF LIVING ROOM SHOWING GORMAN"S "STITCHING"OVER
BR HARRIS AND BLOOD FROM HER WOUNDED HAND AS WELL AS MANY OF
OF ... BULLET HOLES MADE BY GORMAN AND DAVIS'AUTOMATIC FIRE

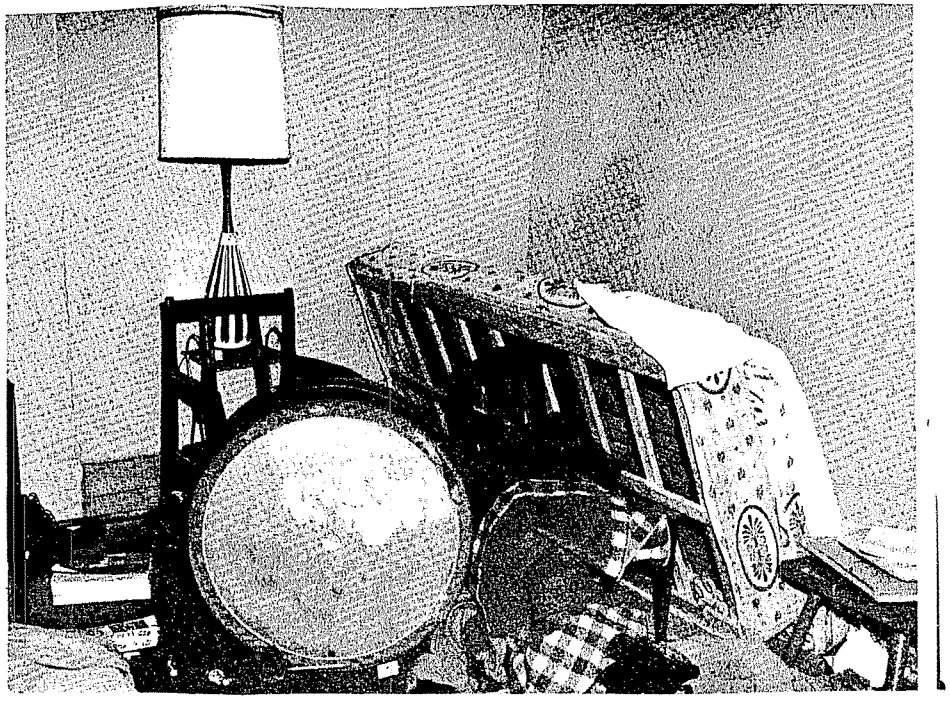


FIG.3D: POLICE PHOTO TAKEN EARLY MORNING 12/4 SHOWING BE HICH
BRENDA HARRIS WAS LYING IN THE SOUTHEAST CORNER

INSTRUCTIONS: Prepare in TRIPLICATE. Forward original to Inspection Division, duplicate to officer's district/unit, and triplicate to district of incident.

DAY: 4 | MONTH: Dec. | YEAR: 69 | C445

NAME OF OFFICER USING FIREARM	STAR NO.	RANK	UNIT OF ASSIGNMENT	DUTY STATUS	IF ON DUTY, TYPE OF ASSIGNMENT
Edward T. Carmody	2517	YO	S/A off.	[X] ON DUTY [ ] OFF DUTY	Special Assign.

TYPE OF INCIDENT (BURGLARY IN PROGRESS, FAMILY FIGHT, ETC.)	LOCATION OF INCIDENT	DISTRICT	INCIDENT OCCURRED
Serving search warrant	2337 W. Monroe St.	13	[X] INDOORS [ ] OUTDOORS

TYPE OF PREMISES	R.D. NO.
Apartment	H-475521

DESCRIBE MANNER IN WHICH YOU BECAME INVOLVED — (RADIO ASSIGNMENT, ON VIEW, ETC. - IF BY RADIO ASSIGNMENT, GIVE WORDING OF MESSAGE.)

Attempt to serve search warrant, shot at by persons inside apartment.

LIGHTING CONDITIONS: [ ] DAYLIGHT [ ] NIGHT [ ] POOR ARTIFICIAL [ ] DUSK [X] GOOD ARTIFICIAL

WEATHER CONDITIONS: [X] CLEAR [ ] RAIN [ ] SNOW [ ] CLOUDY [ ] FOG

WEAPON DESCRIPTION (SPECIFY): [X] COLT [ ] SMITH & WESSON [ ] OTHER [X] 38 CAL. [ ] 357 MAGNUM

NO. OF OPPONENTS	WHAT WEAPONS DID THEY USE?	NO. OF SHOTS FIRED AT YOU	DISTANCE FROM SUSPECT WHEN: FIRST SHOT WAS FIRED?	LAST SHOT WAS FIRED?	NO. OF SHOTS FIRED BY YOU
none	shotguns, 45cal.	?	10 foot	?	5

OFFICER'S POSITION: [X] STANDING [ ] LYING DOWN [ ] OTHER (SPECIFY) [ ] SITTING [ ] KNEELING

DID YOU HAVE GUN DRAWN AND READY FOR USE BEFORE YOU NEEDED IT? [X] YES [ ] NO

ARE YOU: [X] RIGHT HANDED [ ] LEFT HANDED

GUN WORN ON: [ ] RIGHT SIDE [X] LEFT SIDE

DID YOU HAVE TO RELOAD?	IF YES, HOW MANY WERE YOU ABLE TO RELOAD?	HOW LONG DID IT TAKE?	DID YOU COUNT YOUR SHOTS AS YOU FIRED?	DID YOUR WEAPON WORK PROPERLY? IF NO EXPLAIN BELOW	DID YOU HAVE TO SIGHT AND AIM?	NO. OF SHOTS FIRED SINGLE ACT.	DOUBLE ACT.
[ ] YES [X] NO		SEC.	[ ] YES [X] NO	[X] YES [ ] NO	[ ] YES [X] NO	5	

INJURIES: SUSPECT WAS: [ ] NOT WOUNDED [ ] SUPERFICIALLY WOUNDED [X] CRITICALLY WOUNDED [ ] UNKNOWN [ ] KILLED

OFFICER INVOLVED WAS: [ ] NOT WOUNDED [ ] SUPERFICIALLY WOUNDED [ ] CRITICALLY WOUNDED [ ] KILLED

DESCRIBE PROTECTIVE COVER WHICH YOU USED - (LIGHT POLES, DOOR WAYS, CAR, FURNITURE, ETC.)

Door way

WHY DID YOU USE YOUR WEAPON? [X] PROTECT SELF [ ] PREVENT FELONY [ ] SUSPECT WANTED FOR [ ] PROTECT CITIZEN [ ] PREVENT ESCAPE OR FLIGHT OF FELON [ ] OTHER (SPECIFY)

NARRATIVE: (GIVE A DETAILED ACCOUNT OF THE INCIDENT GIVING PARTICULAR ATTENTION TO PROBLEMS WHICH ARE ENCOUNTERED THAT COULD HAVE BEEN AVOIDED THROUGH MORE ADEQUATE TRAINING, BETTER EQUIPMENT, ETC.)

While attempting to serve warrant at 2337 W. Monroe, subject inside the apartment fired upon officers.

UFDP NO. 17

PLAINTIFFS EXHIBIT Eight

Admitted

SIGNATURE OF OFFICER PREPARING REPORT: Edward T. Carmody

DATE: 4 December 1969

CPD-28.803 (REV. 4/67) 445

FIG.10: CARMODY'S FIREARM USE REPORT WHERE HE MARKS "CRITICALLY WOUNDED"

FIG. 8:DEFENDANT WILLIAM O'NEAL

FIG. 8B: CHICAGO POLICE REMOVING FRED HAMPTON'S BODY

PART TWO: PLAINTIFFS' EVIDENCE WAS MORE THAN SUFFICIENT TO REQUIRE THE JURY TO DETERMINE THE LIABILITY OF EACH DEFENDANT ON EVERY COUNT OF THE COMPLAINT

I. INTENTIONAL AND NEGLIGENT HARM

The evidence presented by the Plaintiffs sets forth a prima facie case from which a reasonable juror could conclude that each Defendant was liable on each and every count of the Complaint.* To begin with, the F.B.I. counterintelligence program was illegal in both purpose and in methods, intricately designed to secretly breach the constitutional rights of its targets and evade the criminal law. MARLIN JOHNSON, in concert with Defendants O'NEAL, MITCHELL and PIPER, was officially instructed to "neutralize" and "cripple" the Black Panther Party in Chicago, to "destroy what it stood for", and to prevent the development of strong leadership within its ranks. They employed a broad range of illegal and unconstitu-

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* In reviewing the decision of the Court below, this Court must look to all the evidence in the record, together with all reasonable inferences to be drawn therefrom Burg v. Great Atlantic & Pacific Tea Company, 256 F.2d 613 [7th Cir. 1958]; Calloway v. Central Charge Service, 440 F.2d 287 [D.C. Cir. 1971]; Barron & Holtzoff Wright Ed. § 1075 p. 378. The Court must review the record below, including the evidence erroneously excluded by the trial Court, Clark v. Universal Builders, 501 F.2d 324, 328 [7th Cir. 1974], Cert. den. 95 S.Ct. 657 [1975] and make its own determination as to whether the verdicts are proper. Valdes v. Karrol's Inc., 277 F.2d 637 [7th Cir. 1970] Lambie v. Tibbits, 267 F.2d 902 [7th Cir. 1959]. Where the evidence, and reasonable inferences, when viewed in the light most favorable to the party opposing the motion [i.e. Plaintiffs] are such that reasonable [persons] in a fair and impartial exercise of their judgement may reach different conclusions, the motion for directed verdict must be denied. Pinkowski v. Sherman Hotel, 313 F.2d 190, 192 [7th Cir. 1963]. See, also, Tyrell v. Sears, Roebuck and Co., 392 F.2d 868 [7th Cir. 1968]; Keaten v. Atchison, Topeka and Santa Fe Railroad, 321 F.2d 317 [7th Cir. 1963]; Hannigan v. Sears, Roebuck and Co., 410 F.2d 285, 287 [7th Cir. 1969], cert denied 90 S.Ct 214 [1969]. As to defendants GROTH, DAVIS, GORMAN, JONES, CARMODY, CISZEWSKI and BRODERICK, the fact that the jury deadlocked "further strengthens" plaintiffs contention "that the evidence, with all reasonable inferences to be drawn therefrom, when viewed in the light most favorable to the plaintiff, was such that reasonable men (the jury) not only could but did reach different conclusions." Pinkowski v. Sherman Hotel, supra, at 193.

tional tactics: (1) forged letters designed to discredit HAMPTON, and in fact do him bodily harm; (2) provocations among BPP members by O'NEAL, who encouraged and performed criminal acts and violent political tactics, and falsely accused others of being informants; (3) a phony raid (June 4) in which the purpose was to disrupt the organization and illegally seize its papers and files, and to harass by false arrest rather than to enforce the laws; (4) an illegal wiretap on the BPP office phone, on which agents even listened to conversations between certain Plaintiffs and their attorneys; (5) the interception of mail, as well as the theft of records and other materials from the Plaintiffs and their organization; (6) efforts to disrupt and destroy community and political programs of the BPP in Chicago, including their breakfast program, free health clinic, and the Party newspaper.* The evidence also shows that these Defendants specifically recognized FRED HAMPTON as a "Key leader", in Chicago and moved to "neutralize" him during 1968 and 1969.

The Federal Defendants were also pursuing another important aspect of their illegal program by cooperating with and utilizing local law enforcement agencies. They knew that these agencies,specifically the Special Prosecutions Unit (SPU) and the Gang Intelligence Unit (GIU)--had their own programs aimed at the Plaintiffs and the BPP, and that these agencies themselves employed tactics designed to disrupt and neutralize. Defendant MITCHELL had developed a close working relationship with Defendant JALOVEC, whom he knew had a special elite police squadron under his personal command, designed to combat black political forces and leaders such as the BPP and FRED HAMPTON. MITCHELL also had a close relationship with the anti-BPP

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* Each of these activities in and of themselves embodied wholesale violations of the Constitution, specifically the 1st, 4th, 5th and 14th Amendments, as well as the criminal law, for which harms the Plaintiffs should be able to collect, over and above their injuries as a result of the raid and its coverup. See: Runnels v Rosendale, 499 F2d 733 [9th Cir. 1974]; Paton v La Prade, 524 F2d 862 [3rd Cir. 1965]; Handshu v S.S.D., 349 FSupp 776 [SDNY 1972]; Philadelphia Yearly Mtg v Tate, 519 F2d 1335 [3rd Cir. 1975]

squad of the Police Gang Intelligence Unit, and these relationships were expressly approved, encouraged and supervised by Defendants PIPER and JOHNSON, as an important component of the counterintelligence program.

The Federal Defendants also knew that the local police were becoming increasingly more violent in their dealings with the BPP; that there had been several violent confrontations between the BPP and the police, and the BPP office had been raided, shot up, torn apart, and burned by police officers. Several Panthers had been beaten and a large number arrested. They also knew the BPP was succeeding in reaching many people, both black and white, with their political message; and that this success was in large measure due to the talent and leadership of the dynamic FRED HAMPTON. On November 13, there was another violent confrontation between police and two former members of the BPP, and two policemen were killed. This incident was sensationalized in the press, and the police were full of the thirst for revenge. On the day of this confrontation MITCHELL and the Federal Defendants moved to capitalize on the incident by initiating a raid on the home of FRED HAMPTON. MITCHELL met with O'NEAL, showed him pictures of the dead policemen, and, it is reasonable to infer, directed O'NEAL to get a detailed floorplan of HAMPTON's apartment. O'NEAL returned on the 19th of November with the floorplan which specifically identified the bed upon which HAMPTON slept. Both MITCHELL and O'NEAL knew that the purpose of this floorplan was to effect a raid, and MITCHELL immediately set out to make it happen. He met that very day with Panther Squad members of the GIU, and conveyed the floorplan and information concerning a number of weapons at 2337 W. Monroe. These weapons were suddenly important, although he had known about them for over a month previously, because they supplied him with the pretext for a raid. The GIU planned a raid for the 24th of November, but after PIPER and JOHNSON met on the 23rd, JOHNSON

called the Director of the Intelligence Division, and the GIU raid was cancelled.

Whereupon, MITCHELL moved in earnest to instigate a raid by JALOVEC's SPU. He had five to seven conversations with JALOVEC after the GIU raid was cancelled and before the raid. He conveyed the floorplan to GROTH and JALOVEC, and discussed the location of weapons in the apartment, tactics for a raid, and times when it was known that the Plaintiffs would be home or not home at the apartment. PIPER was aware of these meetings, approved of the passing of the floorplan to GROTH and JALOVEC, and discussed raiding the premises with MITCHELL. He again called the GIU, to make sure that they were not planning a raid.

It can be reasonably inferred that JALOVEC and GROTH planned an illegal raid during their conversations and meetings with MITCHELL. After they received the floorplan , they discussed their plans with HANRAHAN, letting him know that the information came from the FBI and would not be "coming their way" again. From all the evidence it is reasonable to infer that HANRAHAN was fully informed of JALOVEC and GROTH's raid plan, and agreed to the plan and approved its implementation*, because he wished to combat the "anti-police propaganda" that HAMPTON and the BPP had been successfully promoting in the Black community of Chicago. The evidence shows that directly after this meeting GROTH and JALOVEC changed the raid time from 8 p.m., when no one would be at the apartment, to 4:30 a.m., in order to catch the occupants in their beds; then concocted a search warrant to be used as a pretext for the raid. There is evidence that the FBI Defendants as well as HANRAHAN and JALOVEC knew that their information was the sole source for the raid, and therefore knew that GROTH had perjured himself in the application for the warrant.

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* GROTH as much as admitted this when he stated that he met with HANRAHAN and told him key information about the raid - including HAMPTON's residence at the apartment and after that meeting, HANRAHAN "approved" of the raid.

HANRAHAN was shown the warrant and approved it, although he knew or should have known that it was false on its face. He knew that certain of the prospective raiders had unique propensities and motivations for violence and revenge, and was also aware of the high degree of tension between the BPP and the police. It is certainly reasonable to infer that he was aware and approved of—if he did not actually mandate—the change in raid time to an early hour, the taking of a machine gun, the rejection of precautionary measures such as teargas and the use of the element of surprise on the sleeping occupants.* The only comment he could recall making to his special forces was "be careful". On the morning of December 4, GROTH briefed the raiders, telling them that HAMPTON and other Party members would be present, while going over the layout of the premises. The raiders then went to 2337 W. Monroe, and broke in shooting. The evidence supports the conclusion that the Defendants implemented a search and destroy mission in which they fired over 90 shots into the bedrooms of the Plaintiff's, maiming four of them, and willfully and intentionally executed a drugged and unconscious HAMPTON with two bullets in the brain after the apartment was secured.

These facts taken with inferences constitute ample proof of the Defendants' liability.** In Count One, the Plaintiffs seek to recover for violations of their First, Fourth, Fifth, Eighth, Thirteenth and Fourteenth Amendment rights, and evidence shows that each of these rights were violated during the raid. The raid was executed against the Plaintiffs because they were members of the Black

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* The evidence shows that JALOVEC was intimately involved with GROTH in the making of these strategic pre-raid decisions and it is reasonable to infer that they discussed these decisions with HANRAHAN and sought his approval when they met on the 3rd.

** This evidence is further strengthened by the post raid admissions of PIPER, MITCHELL and others, as well as by all of the actions to falsify and conceal evidence [See PART TWO—, (infra)]

Panther Party seeking to politically organize other black people***; in order to chill their right to freedom of political expression and association****, in violation of the First and Fourteenth Amendments. The raid was executed with excessive force, unnecessarily killing two people and seriously injuring four others, and all the surviving Plaintiffs were physically abused and made victims of racist abuse and threats--in violation of the Fourteenth Amendment. The raid was executed under color of a search warrant, which evidently was obtained fraudulently and without probable cause, in violation of the Fourth and Fourteenth Amendments; and the search itself was so unreasonable and destructive as to independently violate the Fourth Amendment.***** The Summary punishment of killing and maiming was without due process, and was so extreme as to breach the strictures of the Eighth Amendment.******

The liability of each Defendant is established under the facts and circumstances of the case. Each of the Defendants committed acts which proximately caused reasonably forseeable injury to the Plaintiffs. The federal defendants' liability in Counts One and Two is grounded both in the Constitution, *******

*** See NAACP v Button, 371 U.S. 415 [1963], McLaughlin v. Tilendis, 398 F.2d 287 [7th Cir. 1968]; Hostrop v. Board of Jr. College Dist. #515, 525 F.2d 569 [7th Cir. 1975]; Glasson v. City of Louisville, 518 F.2d 899 [6th Cir. 1975]

**** Smith v. Ross, 482 F.2d 33 [6th Cir. 1975]; Byrd v. Brischke, 466 F.2d 6 [7th Cir. 1972].

***** See Monroe v. Pape, 365 U.S. 167 (1971); Bivens v. Six Unknown Agents, 403 U.S. 388 (1971), Kerr v. City of Chicago, 424 F.2d 1134 [7th Cir. 1972]; Lankford v. Gelston, 364 F.2d 197 [4th Cir. 1966].

****** See Brazier v. Cherry, 293 F.2d 401 [5th Cir. 1969]; Wakat v. Harlib, 253 F.2d 59 [7th Cir. 1967]; Scheuer v. Rhodes, 416 U.S. 232 (1974).

******* Bivens v. Six Unknown Agents, 403 U.S. 388 [1971]; Beard v. Robinson F.2d [7th Cir. 1977]; Gardels v. Murphy, 377 F.Supp. 1389 [N.D. Ill., 1974]; Paton v. LaPrade, 524 F.2d 862 [3rd Cir. 1965]; Brubaker v. King, 505 F.2d 534, 537 [7th Cir. 1974].

and secondarily, under 42 U.S.C. 1983.* They clearly possessed the intent to cause a raid upon the Plaintiffs for illegal and unconstitutional purposes, using illegal and unconstitutional means. They could foresee, and in fact fully intended, the results which did occur: the wholesale deprivation of civil and constitutional rights. HANRAHAN, JALOVEC and GROTH also intended to deprive the Plaintiffs of their civil rights. They consciously chose and approved the weaponry, the timing and the personnel to go on the raid; and drafted and approved the instrument of illegality--the search warrant. They had to have foreseen the consequences of such planning, yet they promoted them rather than seeking methods which would avoid danger of both great bodily harm and constitutional deprivation to the Plaintiffs.** Further, these actions of the Federals, HANRAHAN, JALOVEC, and the 14 raiders jointly and proximately caused the injury to the Plaintiffs and deprived them of their civil rights.***

The Plaintiffs have certainly made out a case of gross negligence, as alleged in Count Two. The choice of raiders with prior history of brutality and motives of revenge is enough in itself to establish the liability of JALOVEC and HANRAHAN Under this Count,**** and much more than this has been shown. Similarly culpable is the conduct of the raiders who did not fire

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* A federal official may also be held liable under 42 U.S.C. 1983 where, as here, he acts in concert with state officials exercising state power, and where, as here, the State Defendants played a significant role in the result. See: Askew v. Bloemer, 548 F.2d 673 (7th Cir. 1976); ACLU v. City of Chicago, 431 F.Supp. 25 (N.D. Ill, 1975).

** See: Beverly v. Morris, 470 F.2d 1356 (5th Cir. 1972); Sims v. Adams, 537 F.2nd 829 (5th Cir. 1976); Glasson v. City of Louisville, 518 F.2d 899 (6th Cir. 1975).

*** The issues of forseeability and proximate cause are to be determined by a jury. See Prosser, Law of Torts, p. 390 (4 Ed. 1971), Nesmith v. Alford, supra, at 125-6; Hampton v. City of Chicago, 484 F.2d 602 at 610 (7th Cir. 1972); Anderson v. Nosser, 438 F.2d 183 at 198 (5th Cir. 1971); rev'd in part, en banc, 456 F.2d 835 (5th Cir. 1972).

**** See: Moon v. Winfield, 383 F.Supp. 555 (N.D. Ill. 1974); Roberts v. Williams, 456 F2d 819 (5th Cir. 1971).

their weapons but did nothing to stop the use of excessive force, or the beating and mistreatment which followed. See Byrd v. Brishke, 466 F.2d 6 [7th Cir. 1972]. The Defendants may argue that Defendants JALOVEC and HANRAHAN were cloaked with immunity in planning the raid, thereby seeking to relitigate an issue which this Court disposed of in 1972. As the Court said then, these Defendants have only a good faith defense, the same as the raiding Defendants if they acted in an investigative rather than a prosecutorial capacity. Hampton v. City of Chicago, 484 F.2d 602 at 609 [7th Cir. 1973].* The Supreme Court expressly affirmed this holding, in Imbler v. Pactman, 429 U.S. 409 [1976], at p. 430, ftnt. 31.

The Plaintiffs have certainly met their burden in proving that the SPU was a police unit commanded by HANRAHAN and JALOVEC, which was engaged in police functions of investigation, intelligence and counterintelligence; and further, that HANRAHAN and JALOVEC were acting in a police capacity when they acted in concert with the FBI Defendants and their own subordinates to accomplish the raid, and thereafter to suborn the legal apparatus of three governments to cover it up. In fact, the Plaintiffs' evidence went beyond the standard set forth by this Court in its earlier decision, because they showed HANRAHAN's admitted purpose was to counter the "anti-police propaganda" of the BPP; so even the investigative purpose was secondary. HANRAHAN and JALOVEC can at best be said to have a good faith defense to be determined by a jury, and can in no way properly be spared the verdict of a jury on these facts. HAMPTON, supra; Scheuer v Rhodes, 416 U.S. 232 [1974]; Boyd v. Adams, 513 F.2d 83, 86 [7th Cir. 1975].

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* In order to claim absolute immunity, the Defendants would have to prove to the jury that they were acting in a purely prosecutorial capacity. Skehan v. Board of Trustees, 538 F.2d 53 [3rd Cir. 1976], Thomas v. Younglove, 656 F.2d 1171 [9th Cir. 1976].

II. THE CONSPIRACY TO PLAN AND EXECUTE THE RAID

In Count III, the Plaintiffs, charge an explicit civil conspiracy on the part of HANRAHAN, JALOVEC, the Federal Defendants, and the 14 raiders, under the Constitution, 42 U.S.C. 1983, and 42 U.S.C. 1985 [3]. Both Federal and State officers may be held under a 1983 conspiracy, where, as here, the injury suffered by Plaintiffs results from the joint action of State officials with others. See Kletschka v. Driver, 411 F.2d 436 [2nd Cir. 1969]; ACLU v. City of Chicago, supra. Conspiracy is also charged, and may be sustained between the Federal and State Defendants under 42 U.S.C. 1985[3],* and jointly under the Constitution and 1983, Bivens v. Six Unknown Agents [supra]. Under a Sect. 1985 conspiracy, the Plaintiffs are entitled to collect for the violation of their right to equal protection of the laws under the Fifth and Fourteenth Amendments, and must show discriminatory animus, Griffin, supra; whereas under the Constitution and 1983, they may recover for the other Constitutional harms inflicted upon them, and need not prove discriminatory animus. Monroe v. Pape, 365 U.S. 167 [1961], Cohen v. Norris, 300 F.2d 24 [9th Cir. 1962]. Additionally, in the conspiracy liability, the Plaintiffs are not required to prove proximate cause as to each Defendant. If the conspiracy is shown, the Defendants are liable "without regard to the person doing the particular act." Nesmith v. Alford, supra, at 126; Hostrop, supra;** Peterson v. Stanczak, 48 FRD 426 [N.D. Ill. 1969].

The Federal Defendants and the State Defendants shared a common unconsti-

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* See Griffin v. Breckenridge, 403 U.S. 88 [1971]; Cohen v. Illinois Institue of Technology, 524 F.2d 818, 828 [7th Cir. 1975]; Alvarez v. Wilson, 431 F.Supp. 136, 141 [N.D. Ill. 1977]; Dry Creek v. U.S., 515 F.2d 926, 131 [10th Cir. 1975]; Revis v. Laird, 391 F.Supp. 1133 [E.D. Cal. 1975].

** See Also, Mizell v. North Broward Hosp. Dist., 427 F.2d 468, 472 [5th Cir. 1970]; Jones v. Bales, 58 FRD 458 [N.D. Va 1972]; Prosser, Torts, sect. 46 at 293.

tutional purpose which was directed against the Plaintiffs and the Black Panther Party: To repress and stifle by any means necessary, their political advocacy of black people gaining control over their lives and their opposition to government and police repression. A mechanism which was chosen jointly by these Defendants was this raid on the apartment where the leaders of the Party-- and particularly FRED HAMPTON-- resided. The illegal purpose of the Federal Defendants is overwhelmingly shown by the goals and tactics of the counterintelligence program they operated, flagrantly seeking to stifle effective political opposition. They not only tried to repress the Plaintiffs because of their political message, but also because they were black and their message was reaching black people--especially through their community programs and newspaper. Although the Defendants employed counterintelligence against all political groups, they never moved so intensely and violently as they did against the Plaintiffs and the Black Panther Party.

The State Defendants shared a common unconstitutional purpose with the Federal Defendants. HANRAHAN himself said one of the main functions of his SPU was to combat anti-police "propaganda", and to encourage support for the police among the population. HANRAHAN knew the BPP was most effective in organizing black people (the victims of police brutality) with this "propaganda," and admitted that the raid was in direct response to their political success. Additionally, his police unit, directed by JALOVEC, focused on the black community and was part of a public relations campaign built by fanning the flames of white racism to promote HANRAHAN's political career and to discredit and destroy his political opposition. HANRAHAN's purpose is further highlighted by his post-raid activities, where he tried to further discredit the Plaintiffs and the BPP by spreading false stories in the media, and by pursuing an unfounded prosecution. The Defendant raiders shared this purpose as is amply demonstrated

both by their prior backgrounds, and by their actions in executing the raid in such a brutal and premeditated way. The racial and political epithets* they spoke are admissions of both their unconstitutional purpose and intent, and their discriminatory animus.** All of the defendants involved in planning and executing the raid had a shared intent and common purpose to repress the Plaintiffs politically, with racially discriminatory animus; and the Plaintiffs clearly proved this element of the conspiracy.

This shared purpose and intent is illuminated by the Defendants' conduct in making the raid and the malicious prosecution which followed. The Federal Defendants has used raids for unconstitutional purposes against the Plaintiffs and the BPP in the past. In fact, one of the policies and tactics of their counterintelligence program was to solicit local police authorities to raid and arrest BPP members in order to harrass them and prevent them from exercising their right to political activity and expression. They were aware of the extreme racial and political animosity that the police harbored against the BPP, and especially their charismatic young spokesman, FRED HAMPTON, and they knew this hatred could be fully exploited after the confrontation on November 13. HANRAHAN and JALOVEC also knew of this climate. They knew that some of their squad members were friends of the deceased officers, and also knew that the BPP called for self-defense against police attack. They chose 4 a.m. as a raid time in order to "surprise" the occupants while they were in bed. They approved of the use of a machine gun and rejected the use of tear gas, lights and loudspeakers.

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* The purpose is tellingly portrayed by the comment of one raider at the apartment who said to SATCHEL: "If Panthers kill Police, Police kill Panthers" [Tr 12182]

** See: Murphy v. Mt. Carmel High School, 543 F.2d 1189 [7th Cir. 1976]; Cameron v. Brock, 473 F.2d 608 [6th Cir. 1973]; Means v. Wilson, 522 F.2d 833, 839 [8th Cir. 1975]; Richardson v. Miller, 446 F.2d 1247 [3rd Cir. 1971].

The Federal Defendants' intent to have the State Defendants perform an unconstitutional raid can be inferred from their actions and statements, and the chain of circumstantial evidence. This is often the manner of proof in a conspiracy, which, by definition, is secret and often not susceptible to direct proof.* MITCHELL clearly intended to procure a raid by local police when he sought the floorplan from O'NEAL, who likewise understood its purpose. This is underscored by MITCHELL's own admission that the floorplan would be invaluable for a raid, and because the GIU, with whom he had a close, long-standing relationship, quickly utilized his information, especially the floorplan, to plan their raid. By MITCHELL's own admission, he discussed with the GIU other information key to a raid--such as when the occupants would be home. During this time, PIPER was meeting with MITCHELL and JOHNSON and they were also being informed by memo. MITCHELL kept PIPER informed, and PIPER kept JOHNSON informed. At key points in MITCHELL's contacts with the GIU and the SPU, both PIPER and JOHNSON intervened in person to make sure that the GIU did not execute a raid. PIPER and MITCHELL were discussing a raid themselves, and PIPER approved of MITCHELL's passing of the floorplan to JALOVEC and GROTH. Both JOHNSON and PIPER knew that MITCHELL was meeting with JALOVEC, and it is reasonable to infer that PIPER also informed JOHNSON of all of the details of MITCHELL's communications with JALOVEC and GROTH. The three agents carefully avoided passing on any information to Bureau Headquarters (or to the AFTD) which would show a basis for a federal weapons raid, although they claimed to have given such information to JALOVEC, as well as to the GIU. MITCHELL had five to seven conversations with GROTH and JALOVEC after they had assured themselves that the GIU raid was cancelled. MITCHELL had such a close working relationship with JALOVEC that he had revealed the identity of O'NEAL

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* See Connolly v. Gishwiller, 162 F.2d 428, 433 [7th Cir. 1947]; Zabriskie v. Leivis, 507 F.2d 546 [10th Cir. 1974]; William Goodman Theatres v. Locus, Inc., 150 F.2d 738, 743 [3rd Cir. 1945].

to him--the only time he had broken the agent's code of secrecy. MITCHELL met with JALOVEC and GROTH and conveyed the floorplan to the man who was to lead the raid--with HAMPTON's bed specifically targeted. And on the day before the raid was executed, Defendants PIPER and JOHNSON ratified the State Defendants' "positive course of action" by approving the raid as a counterintelligence action. This emphatically confirmed the illegal purpose and intent of the Federal Defendants.

While we will never know the actual words spoken in these many meetings and communications among the Federal Defendants, the State Defendants, or between these two subgroups within the broad conspiracy connected by MITCHELL, GROTH and JALOVEC, the inferences that can be drawn from their shared unconstitutional purpose, their understanding, knowledge and approval of key elements of the plan,* and their close relationships and the meetings themselves, are sufficient to establish a prime facie case of conspiracy. Picking v. Pennsylvania, 5 FRD 76 [M.D. Pa. 1946]. Even more importantly, the key element to examine in determining a civil conspiracy is the conduct of the Defendants taken with common purpose, which causes the injury to the Plaintiffs. Unlike criminal conspiracy, there is no civil liability for the conspiracy per se; rather, the unconstitutional conduct is evidence not only of the violation by the wrongdoer, but also raises inferences which can be employed to show the conspiracy itself.** The foremost result of this conspiracy is, of course, the raid itself, and the unconstitutional conduct of the Defendants in executing the raid is strong

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* See: Glasson v. City of Louisville, supra; Morgan v. Sylvester, 125 F.Supp. 380, 389 (S.D.N.Y. 1954), aff'd 220 F.2d 758 (2nd Cir.).

** Rotermund v. United States Steel Corporation, 474 F.2d 1139 [8th Cir. 1973]; Grison v. Logan, 334 F.Supp. 273, 789 [C.D. Cal. 1971]; Blankenship v. Boyle, 329 F.Supp. 1089, 1099 [D.D.C. 1971]; Hoffman v. Halden, 268 F.2d 280, 295 [9th Cir. 1959]; Fitzgerald v. Seamans, 384 F.Supp. 688, 693 [D.D.C. 1974]; Weise v. Reisner, 318 F.Supp. 580, 583 [E.D. Wisc. 1970]; Tri Tron Intern v. Velte, 525 F.2d 432, 438 [9th Cir. 1975]; Peterson v. Stanczak, 48 FRD 426, 428 [N.D. Ill. 1969].

additional evidence of their illegal motive and purpose. The admission by GROTH that he informed his men that HAMPTON "frequented" the apartment, and his use of the floorplan showing HAMPTON's bed in briefing his men, becomes even more powerful evidence of the conspiracy when one sees the pattern of police bullets converging from three directions at the head of the bed; and the uncontrovertible evidence that HAMPTON was executed on that bed, while drugged and unconscious, after the others in that room had been removed. Further the inference that the Defendants participated in the drugging of HAMPTON can be drawn from the evidence that HAMPTON never used drugs, and that O'NEAL and possibly other yet unknown informants were present at 2337 W. Monroe late that evening. Additionally, the speed of the strike, and the extreme lethal force and brutality used by the raiders, further highlight the conspiratorial intent and motive of the Defendants.

The procurement of the search warrant as a cover for this raid is further evidence of conspiratorial intent and design. The irregularities on the face of the warrant, the decision by JALOVEC to keep MITCHELL's name out of the warrant, the admissions of both PIPER and HANRAHAN that O'NEAL's information from the FBI was the only source for the warrant, and GROTH's steadfast refusal to give information concerning his alleged informant--even in the face of contempt--all give rise to a strong inference that, at a minimum, HANRAHAN, JALOVEC, GROTH, MITCHELL and PIPER, had knowingly procured a warrant on a perjured affidavit. This inference makes the Federal Defendants' role in the conspiracy even more integral, and establishes that the "legal" underpinning for the raid was in fact illegally procured, in furtherance of the aims of the conspiracy. In addition, there is a clear inference that the raid itself was entirely illegal from inception through execution, as a patent violation of the Fourth Amendment.

See Monroe v. Pape [supra]; Mapp v. Ohio, 367 U.S. 643 [1961], Kerr v. City of Chicago, [supra].

Two of the most significant items of proof of the Federal Defendants' purpose and involvement are the post-raid "admissions" of PIPER AND MITHCELL. Just after the raid, PIPER told Bureau Headquarters that the floorplan had been "of tremendous value" to the raiding police and that, in essence, they had caused the raid to happen. The Federal Defendants ratified the results of the raid -- especially the murder of HAMPTON-- by this claim of PIPER's as well as by their application for a bonus for O'NEAL. Even more telling, Defendant PIPER was shown to have had prior knowledge of the purpose and intent of the raid by the memo in which he approved of it as a counterintelligence action, on December 3, 1969. At trial, he termed the raid a "success." Further, MITCHELL, some two months later, wrote a statement similar to PIPER's memo, taking credit for the F.B.I.'s role in causing the raid --again seeking money for O'NEAL. Such admissions and declarations of success clearly establish the Defendants' state of mind at the time of the planning, as well as giving direct evidence of their involvement in it. See: U.S. v. Dellinger, 472 F.2d 340, 394, 403-5 (7th Cir. 1972).*

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* In Dellinger, this Court, in finding the evidence of conspiracy and intent sufficient against Defendant Hoffman [despite the doctrine of strictismi juris, as the offense charged was in the shadow of the First Amendment, unlike here, where the offense is in furtherance of the destruction of the First Amendment], the Court weighed heavily certain admissions made after the convention days--where Hoffman cited to the "success" of the demonstrations as clear evidence of his intent at the time he entered interstate commerce to come to Chicago to demonstrate.

III. THE COVERUP: A CONTINUING CONSPIRACY

A. CONCEALMENT AND FALSIFICATION OF EVIDENCE, AS EVIDENCE OF THEIR GUILT

The conduct of the Defendants in concealing their involvement both before and after the raid is also strong evidence of both intent and guilt. Before the raid, MITCHELL and PIPER departed from normal reporting procedures and kept secret the written record of their involvement. MITCHELL made only an original of the floorplan document, and placed it in a file where only JOHNSON and PIPER would have access to it. MITCHELL himself admitted that at least one copy of the floorplan should have been made and sent to the BPP file, but was not. They again departed from normal procedures when they did not notify Headquarters of the passing of the floorplan to the SAO, even though such "dissemination" was required to be reported. Similarly, they did not inform appropriate federal agencies (AFTD) that they allegedly had information of federal law violations at 2337 W. Monroe-- a sawed-off shotgun and stolen police gun--although they claimed they had both told the GIU and the SAO about these weapons before the raid. They never wrote this information down until eight days after the raid; and they never informed the Bureau in Washington, although headquarters was "very interested" in weapons. But they had informed the Bureau and AFTD of numerous "weapons legally purchased", on November 21st, which was two days after they later said they had learned the information about the federally illegal weapons. Additionally, they buried the memo concerning the illegal weapons dated 12/12/69, in the same confidential file on O'NEAL to which only these three FBI Defendants had access.

Concealment of key evidence by these Federal Defendants after the raid is further direct evidence of their guilt. MITCHELL met with JOHNSON and PIPER (as well as O'NEAL) on December 4, and then met with JALOVEC, GROTH and HANRAHAN.

He spoke again with GROTH the next day. SAC JOHNSON began a preliminary investigation into the raid, then took over responsibility for directing the FBI's search for evidence for Jerris Leonard and the FGJ. In this role he was in such close contact with Leonard and his investigation that he was informed in "strictest confidence" of the deal between Leonard and HANRAHAN. Yet when he testified before the FGJ, he "did not compromise" the Federal Defendants' position. After a discussion with PIPER, where he "asked for all pertinent information", he testified under oath and specifically omitted any mention of the floorplan or the sawed-off shotgun information. JOHNSON in fact specifically denied that the FBI had had any information about a sawed-off shotgun,* and of course, the staging of the raid as a counterintelligence activity was not mentioned.** PIPER and MITCHELL supplied selective derogatory intelligence information on the Plaintiffs and the BPP to the FGJ case agent, but neither testified before the Jury, nor brought up the floorplan, [PL #21] or their passing of information about a sawed-off shotgun. [PL #23] The pattern of concealment by officers who had a duty to come forward with information is strong direct evidence of guilt, to say nothing of obstruction of justice. See: Ashcraft v. Tennessee, 327 U.S. 274 [1946]; U.S. v. Strickland, 509 F.2d 273 [5th Cir. 1974]; U.S. v. Finance Committee to Re-elect the President, 507 F.2d 1194 [D.C. Cir. 1974]; U.S. v. Brathier, 548 F.2d 1315 [9th Cir. 1976]; Cummings v. U.S., 398 F.2d 377 [8th Cir. 1968]; 18 USC 1503, 1510.***

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* He was able to do this because in testifying he recited the 12/12 cover-up memo word for word, but omitted the last paragraph, which included information about a sawed-off shotgun. See Appendix D.

** In fact the Defendants had pledged to keep all of their counterintelligence activities secret—a powerful admission of wrongdoing.

*** It is obstruction of justice to impede a Federal criminal investigation, withhold material evidence from a Federal criminal investigator, or to impede or to attempt to influence or impede the testimony of a Federal witness. 28 U.S.C. 1503, 1510.

Concealment of evidence by the Federal Defendants continued through the trial, and is continuing to this day. Defendant MITCHELL testified in front of Barnabas Sears' Special State Grand Jury and again did not reveal the existence of the floorplan or the sawed-off shotgun information, although he was asked what information he passed to JALOVEC and the SAO. O'NEAL, in his first deposition, denied that he supplied the floorplan to MITCHELL, but then it was "discovered" by FBI agent Vorenberger, and turned over to Plaintiffs by former U.S. Attorney Sheldon Waxman in April of 1974. PIPER was in charge of production of all of the FBI files, pursuant to Court order, yet over 90% of the files ordered were not produced. Among the documents withheld were the PIPER and MITCHELL admissions [PL #83 and 91]*, and numerous documents which directly implicated Defendant JOHNSON in the day-to-day activities of the Defendants' war against the Plaintiffs and the constitution. The Government lawyers representing these Defendants directly assisted in this concealment, and O'NEAL did his part during the trial by attempting to influence the witnesses Junior and Bruce.** This pattern of coverup and concealment has kept suppressed to this day much additional evidence of the Defendants' guilt, [See Part FOUR, Sect IV] and is powerful evidence of their complicity in the conspiracy which the Plaintiffs have charged. U.S. v. Strickland, supra; Cummings v. U.S., supra; U.S. v. U.S. Finance Committee to Re-elect the President, supra; see also, U.S. v. Dellinger, supra, at 394.

The actions of the State Defendants after the raid, likewise show a course of conduct designed to conceal and falsify evidence, which must also be considered

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* Mitchell, who had the best working knowledge of this evidence, was deeply involved in its suppression even after his fateful slip of March 17th. [See: PART FOUR, I, Sect. I, B.]

** Such an attempt to impede or influence a witness' testimony is also direct evidence of guilt. U.S. v. Culotta, 413 F.2d 1343 [2nd Cir. 1969], 2 Wigmore 278.

as direct evidence of their culpability. Defendant HANRAHAN spearheaded this conduct, starting with his false and inflamatory press conference of December 4, when he promoted the lie that HAMPTON had repeatedly fired at the raiders, and that his raiders had shown "extreme bravery" in the face of a gun battle promoted by the "vicious and criminal" Black Panthers. On the same day, after meeting with both HANRAHAN, JALOVEC and MITCHELL, GROTH allegedly destroyed the floorplan which he used in briefing his men and carried on the raid. HANRAHAN, JALOVEC and his raiders again broadcast their false exculpatory statements through CBS-TV and the Chicago Tribune, and conspired with members of the police investigations division (IID) to create a sham investigation of the officers' conduct in order to reinforce the officers' false stories with "investigative" findings that were published in the media. GROTH testified falsely at the Public Coroner's Inquest, as did other officers, and denied three key elements of the conspiracy: that he had meeting(s) with HANRAHAN on the day before the raid (where HANRAHAN approved of the raid); that he had a floorplan or layout of the premises; and that he knew or suspected HAMPTON would be at the apartment.

SADUNAS, after communication and pressure, from the SAO, falsified evidence about two shotshells [N and O] which he then swore to at the Coroner's Inquest. KOLUDROVIC filed a false report which said that two bullets had been fired from the inside out through the front door, and combined with JALOVEC and the raiders to spoliate evidence at the apartment on December 4, not marking items recovered or taking fingerprints, and destroying the crime scene with a violent ransacking of the apartment. The Defendants withheld their weapons from inventory and testing for over a month. JALOVEC, GROTH and HANRAHAN withheld from the FGJ the existence of the floorplan, and MITCHELL's role in supplying the floorplan and the information concerning the sawed-off shotgun. GROTH destroyed all written documentation concerning the information allegedly supplied by his

alleged informant, as well as his floorplan, and refused to reveal information concerning the informant's identity. HANRAHAN, JALOVEC and the State Defendants misused the power and mechanism of the SAO by falsely arresting and prosecuting the Plaintiffs, and continued the policy of concealment and obstructionism in this litigation--from the shocking pretrial stonewalling by HANRAHAN and his co-defendants, to every form of misdirection and obstruction in the trial, including intimidation of a Plaintiffs' witness by a defense attorney and his police assistant. [See: PART ONE, p. 82]

All this evidence must be weighed by a jury as evidence of guilt, and is further proof of these Defendants' intent to violate the Plaintiffs' constitutional rights by an illegal and unconstitutional raid. See: U.S. v. Culotta, supra; U.S. v. Cirello, 468 F.2d 1233 [2nd Cir. 1972]; U.S. v. Strickland, supra.

The evidence of the Defendants shared unconstitutional intent and purpose, as well as their coming together in an understanding way* when combined with the evidence of the raid itself, and the admissions and concealment which has followed to the present, is more than enough to go to the jury on conspiracy to plan and execute the raid as to each Defendant; in fact higher Courts have

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* The evidence presented in this case including the constant communications and meetings between Defendants concerning the raid is more than sufficient to prove the degree of mutual understanding or agreement required to prove a civil conspiracy. This standard is not high and must usually be met solely by inferences from the acts of the parties without additional proof of actual meetings which we have here. Rottermund v. U.S. Steel Corp., 474 F.2d 1139, 1145 [8th Cir. 1973]; Hedrick v. Perry, 102 F.2d 802, 806 [3rd Cir. 1939]; Blankenship v. Boyle, 329 F.Supp. 1089; Adikes v. S.H. Kress, 398 U.S. 144 [1970]; Blumenthal v. U.S., 332 U.S. 539 [557-8] 1947; Milgram v. Loews, 192 F.2d 579 [3rd Cir. 1951]; American Tobacco Co. v. U.S., 328 U.S. 781 at 810; Standard Oil Co. of Cal. v. Moore, 251 F.2d 188 [9th Cir. 1958]; Lake Valley Farm Products v. Milk Wagon Drivers Union Local 753, 108 F.2d 436, 444 [7th Cir. 1940]; Zabriskie v. Lewis, 507 F.2d 546 [10th Cir. 1974]; United States v. Varelli, 407 F.2d 735 [7th Cir. 1969].

repeatedly, both in civil and criminal cases, upheld jury verdicts on conspiracy evidence far less complete and convincing than that presented by the Plaintiffs in this case. Allen v. U.S., 4 F.2d, 688 [7th Cir. 1924]; Boeing Co. v. Shipman, 411 F.2d 365 at 374 [5th Cir. 1969]; U.S. v. Bruno, 105 F.2 921 [Cir. 19]; Jezewski v. U.S., 13 F.2d 599 [6th Cir. 1926]; Anderson v. Nosser [supra].

Additionally the Plaintiffs in Count IV have claimed that the Defendants are liable under 42 U.S.C. 1986, for failure to prevent harm from a 1985 conspiracy. This Count would hold liable those defendants who knew of the conspiracy but failed to stop it. A Defendant does not have to be part of the conspiracy to be liable. As said above, there is sufficient evidence to hold each defendant liable in the conspiracy, and it is a reasonable inference from the same evidence that the defendants knew about the conspiracy and did nothing to prevent it. There is certainly sufficient evidence of the defendants acts from which reasonable jurors could infer that each knew about an illegal conspiracy. Indeed, every defendant was close to the conspiracy, and was in daily communication with the other participants. MITCHELL worked with and reported to PIPER and JOHNSON. JALOVEC worked under HANRAHAN and supervised GROTH. Every defendant (except O'NEAL) was charged with the duty to prevent violations of the law. Supervisors JOHNSON, PIPER, HANRAHAN, and JALOVEC could hardly be free from liability for conspiracy in which their subordinates participated and of which they had actual knowledge. Under these circumstances, failure to act constitutes approval, and clearly they are responsible for preventing wrongs by their subordinates. Likewise there is evidence from which the jury could reasonably infer that the raiders learned of the conspiracy during the pre-raid meeting, or during the shooting, beatings and brutalization of Plaintiffs in the raid. There is no evidence that any of the Defendants took any steps to halt or expose the conspiracy or protect the Plaintiffs from harm. The Plaintiffs therefore made out a prima-facie case under Count IV and it likewise should have been submitted to the jury. See:

Hamilton v. Chaffin, 506 F.2d 904 [5th Cir. 1975]; Tollett v. Lamen, 497 F.2d 1231 [8th Cir. 1974]; Byrd v. Brishke, 466 F.2d 6 (7th Cir. 1972).

B. FALSE ARREST AND MALICIOUS PROSECUTION

The evidence of the post-raid actions of the Defendants also establishes additional constitutional injury to the Plaintiffs, as alleged in Counts V to XI of the Complaint. The proof supports the charge that the Defendants falsely arrested and maliciously prosecuted the Plaintiffs after the raid, on evidence which was manufactured by the Defendants. The evidence shows that the Plaintiffs were jailed on false complaints sworn to by the Defendants, charging attempted murder and other felony offenses. These charges were approved and ratified by JALOVEC and HANRAHAN, and the Plaintiffs were kept in jail under high bond for three days to three weeks. Those too seriously injured to leave the hospital were chained to their beds for several days. HANRAHAN and JALOVEC took their false evidence straight to the Grand Jury, rather than holding a preliminary hearing in public. An indictment was obtained against all seven survivors based on the false identification of shotshells [N and O] and the false testimony of the raiding police officers.

Defendants ERVANIAN, MEADE, KUKOWINSKI, MULCHRONE joined the conspiracy when HANRAHAN and JALOVEC enlisted their aid in covering up the truth with a phony IID investigation.* This investigation was designed to protect the raiders' stories and prevent the development of evidence that might aid the Plaintiffs in

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* Under the prior holding of this Court in HAMPTON, it was certainly for the jury to decide whether the IID Defendants were liable for maliciously prosecuting the Plaintiffs or conspiracy to do so. [See HAMPTON, supra, at 609, 610] It would also be reasonable to infer that they cooperated in the efforts to obtain the original unconstitutional results of the conspiracy, and therefore are liable for the harm that was inflicted before their entry. Allen v. U.S. 4 F.2d 668 [7th Cir. 1924]; Koehler v. Cummings, 380 F.Supp. 1294 (M.D. Tenn. 1974]

their defense against the false charges. Defendants JALOVEC, MELTREGER and SOROSKY* --at HANRAHAN's instruction-- directly participated with the I.I.D. Defendants in this effort to suppress evidence favorable to the Plaintiffs. The false and inflamatory public utterances of HANRAHAN and the other Defendants, especially including the phony I.I.D. Report which exonerated the officers, were expressly designed to prejudice the Plaintiffs' case in the community. The Defendants prolonged these unfounded prosecutions for three months after it was demonstrated to them beyond doubt by Zimmers that the basis for the indictments --SADUNAS' identification of N and O-- was false.

MARLIN JOHNSON was also aware of Zimmers' report in early February, but, like HANRAHAN and others, did not inform the Plaintiffs of this favorable evidence. Instead, he helped facilitate the deal between HANRAHAN and Jerris Leonard. This deal would assure HANRAHAN and his men that they would not be indicted by the F.G.J., and HANRAHAN would drop the indictments against the Plaintiffs that had been exposed as fraudulent by Zimmers. Clearly, the F.B.I.'s and JOHNSON's interest was to keep their role in the raid secret, and this necessitated the continued cooperation of the State Defendants --as JALOVEC had shown in his earlier testimony in front of the F.G.J.** Additionally, it necessitated insulation of GROTH from probing about his purported informant, and he got it when he testified the day after the deal was struck. The Federal

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* SOROSKY, MELTREGER and JALOVEC could not be immune for their actions at the I.I.D. for it was not a prosecutorial function, but further, because none of them was involved in the prosecution of the Plaintiffs, but rather were acting extralegally as protectors of the coverup. See Helstoski v. Goldstein, 552 F.2d 564 (3rd Cir. 1977); Briggs v. Goodwin, #75-1642, ___F.2d ___ (D.C.Cir. 1977).

** JOHNSON and Leonard had to know, even if HANRAHAN did not directly communicate it, that he was not about to allow himself and his raiders to be indicted without exposing the F.B.I. role --as HANRAHAN's opportunism in performing the raid for his own political purposes, as well as his "sell-out" of the crime Lab and I.I.D. Officials before the Federal Grand Jury, amply demonstrated. In 1975 and 1976, HANRAHAN did publicly shift the blame to the F.B.I.; in his campaign for mayor he admitted for the first time publicly that the F.B.I. had been the sole source for the raid; in 1976, after the Senate Select Committee released its report on COINTELPRO, he broadly implied on C.B.S. T.V. that he would not have staged the raid if he had known about COINTELPRO.

prosecutors, holding up their end of the deal, never presented indictments to the F.G.J. for vote; but HANRAHAN* attempted to continue the prosecutions to the bitter end, despite his knowledge since February that their basis was fraudulent.

This evidence, viewed in the light most favorable to the Plaintiffs, certainly supports their claims in Counts VII-XI that each Defendant intentionally aided and abetted the false arrests and malicious prosecutions, knowing that those charges were false; and further, participated in a conspiracy to effect those aims.** See Monroe v. Pape, supra; Hilliard v. Williams, 516 F.2d 1344 (6th Cir. 1975); Joseph v. Rowlen, 402 F.2d 367 (7th Cir. 1968).***

C. ADDITIONAL CONSTITUTIONAL DEPRIVATIONS ARISING FROM THE CONTINUING COVERUP

Moreover, the facts and inferences established by the Plaintiffs at trial, showed a continuing conspiracy and course of conduct, which inflicted additional constitutional deprivations upon the Plaintiffs. The original purpose and intent, clearly articulated by the Federal Defendants in their counter-intelligence policy and program, was to cause a raid, arrests, and prosecutions, in order to disrupt, discredit and neutralize the Plaintiffs and the B.P.P.,

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* HANRAHAN may claim that he is immune from liability for this malicious prosecution. This seems to be inappropriate where, as here, this injury flows as a direct result of his clearly actionable conduct in planning and approving the raid. Additionally, much of the conduct that he participated in after the raid was not prosecutorial in nature --such as the press statements-- and therefore unprotected by immunity. Helstoski, supra; Briggs v. Goodwin, supra.

** The Plaintiffs have likewise alleged and shown, a §1986 conspiracy by all of the Defendants who participated in the post raid coverup, false arrest and malicious prosecution. The evidence is especially strong against the "I.I.D." Defendants who were made fully aware of the conspiracy to suppress evidence and maliciously prosecute, and did nothing to prevent its success.

*** Nesmith v. Alford, supra; Muller v. Wachtel, 345 F.Supp. 160 (D.N.Y. 1972); Whirl v. Kern, 407 F.2d 781 (5th Cir. 1968).

and HANRAHAN, with the aid of a succession of police officers and assistant prosecutors, likewise sought to discredit and neutralize the Plaintiffs and the B.P.P. by using the scurrilous prosecution to publicly promote the Defendants' false version of the raid. The cold brutality of the raid, as well as this post raid campaign to discredit and disrupt the Plaintiffs, had a profound chilling effect on them and the B.P.P., in violation of the First and Fourteenth Amendments.

This disruption and obstruction has been continued to the present day by the actions of these Defendants, and the main arena for such action has been this very lawsuit. The Defendants have not only continued their assault on the Plaintiffs' First Amendment rights, but have also violated their right to due process, fair trial, and trial by jury. In reality, the continuing conspiracy has enlisted new members, including the lawyers who represent these Defendants, and the government chieftains who sponsor them, as well as finding an unfailing supporter in the judge before whom the case was heard. Such conspiratorial actions by the Defendants is actionable, and, upon retrial, the Plaintiffs should be allowed to recover for these harms.*

The evidence, with its reasonable inferences, makes out a strong case against each Defendant on each count of the Complaint. The guilt and complicity of the Defendants is further highlighted by their repeated attempts to conceal and falsify evidence which establishes their guilt. The pattern of the Defendants' obstruction and their solidarity in concealing what they have done

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* See Rule 15(b) F.R.C.P. This deprivation includes the substantive right to litigate under the Civil Rights Act. See: M.P.I.R.G. v. JOHNSON, #4-72-Civ. #255 (D.Minn. 1972)(Findings of Fact) where the Court held that police officers must use badge numbers, because if they did not they were preventing citizens from vindicating their constitutional rights if they were abused by the police; see also, Tobler v. Moylan, #76-C-380, (N.D.ILL. 4/12/77, mem. order of Crowley, J.) where the Court upheld a cause of action [Count II] for the suppression of evidence of constitutional wrongdoing as a violation of due process and equal protection.

shows that there is still much to uncover of the whole body of evidence which proves Plaintiffs' claims. Nonetheless, the evidence was more than sufficient at this trial to take to the jury on each and every count of the Complaint.

PART THREE: THE COURT DISREGARDED THE PROPER LEGAL STANDARD AND RULED ACCORDING TO HIS PERSONAL BIAS IN GRANTING THE DIRECTED VERDICTS

The District Judge erred in granting directed verdicts in favor of the Defendants, in that he (a) used an impermissable standard in assessing the evidence; (b) applied an improper burden of proof to the Plaintiffs' case; and (c), invaded the province of the jury.

Despite massive evidence, direct and circumstantial, physical and documentary, Judge Perry discarded Plaintiffs' case en toto. Logic and reason compel the conclusion that either he was resolved to vindicate the Defendants no matter what the Plaintiffs proved, or he grossly erred in exercising the Court's function of ruling on the evidence. While his orders are largely conclusory, one can glean insight from his unique and startling "Summary"--a 48-page Wonderland document which he did not put of record (see Appendix A)* --as to his view of the evidence itself, the standard to be used in weighing it, and what he relied on in acquitting all Defendants on all counts. The inescapable conclusion from a reading of the "Summary" is that Judge Perry viewed the evidence in the light most favorable to the Defendants, ignoring the elementary rule to the contrary, imposed on courts consistently throughout the history of Common Law; See, e.g., Pawling v. United States, 4 (Branch 219, 220, 222, 8 U.S. 219, 220, 222, 2 L.Ed. 601 (1808); the very rule upon which he had been resoundingly reversed by this Court in Byrd v. Brischke, 446 F.2d 6 (7th Cir. 1972).

Byrd was also a civil rights action, to recover for injuries sustained as a result of summary punishment inflicted upon plaintiff at the hands of police. After considering Judge Perry's statement, which included his reasons for directing the verdict, the Byrd court found itself "...convinced that the judge used an improper standard in granting the directed verdicts. It is clear that

* Appellants move to supplement the Record on Appeal by adding this remarkable document and its letter of transmittal, not published until after the Notice of Appeal was filed, in which the Court "explained" his decision to throw the case out.

he viewed the evidence in the light most favorable to the defendants...contrary to the proper standard." 446 F.2d at p. 9.

A review of Judge Perry's "Summary" in this case shows his remorseless failure to make any effort to observe the guidelines this Court spelled out in Byrd:

- Despite evidence of the post-raid coverup by the Chicago Police Department's Internal Inspection Division described by Defendant ERVANIAN as a "whitewash," Judge Perry's summary states only that the IID recommended that the 14 police officers not be disciplined. [p. 9][Citation to Court's Summary]

- Despite documentary evidence revealing an agreement whereby HANRAHAN would dismiss the state court indictment against BPP members [PL #24], Judge Perry concluded that "the State's Attorney was coerced into dismissing said indictments." [p. 10]

- Despite the FBI's own documents, in which, for example, the Bureau credited its counterintelligence program for contributing to "shooting, beatings, and high degree of unrest [which] continued to prevail" in the black ghetto of San Diego [PL #126, 129], and in which Defendant JOHNSON approved the infamous "hit letter" to Jeff Fort, soliciting "retaliatory action" against the Plaintiffs [PL #8-12];* Judge Perry describes the purpose of the counterintelligence program as being "to prevent violence;" and found it "was in every way warranted as a matter of fact and law." [p. 16]

- Despite irrefutable evidence that there was no logical basis for Defendant SADUNAS' misidentification of shells from Defendant CISZEWSKI's shotgun as being fired from BRENDA HARRIS' gun, the Judge called it an "error in his firearms report." [p. 17]

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* The mailing of this letter, approved by defendant JOHNSON, was a crime, in violation of 18 USC § 876. See, United States v. Pennell, 144 F. Supp. 320 [N.D. Cal. 1956]; United States v. Prochaska, 222 F.2d 1 [7th Cir. 1955], cert denied; 350 U.S. 836; and United States v. Reynolds, 532 F.2d 1150 [7th Cir. 1976]. (In which Judge Perry, ironically, sitting by designation, heard arguments the very day after PL 10-13 were admitted into evidence and JOHNSON declared a "hit" was a "non-violent act".) The letter also constituted solicitation to murder under state criminal statutes. Ill Rev. Stat., Ch. 38 §§ 8-1, 9-1.

• Despite the fact that the very existence of GROTH's "informant" was at issue, and that GROTH testified he could recall no other information supplied by this informant prior to November, 1969 [Tr. 25157-63], the Court fully accepted that "GROTH had information from one he considered a previously reliable informant." [p. 20]

• Despite his own refusal to take the "Stipulation as to Testimony of Members of Andrew Evidence Group" (PL #RZ94, o.p.], introduced at People v. Hanrahan, 71 CR 1791, as an admission by certain Defendants;*his refusal also to require certain Defendants to concede this testimony at trial so that the gathered evidence could be received; his original statement that the Andrew evidence was "cumulative"and unnecessary; [Tr. 19848] and his cut-off order, which forced a drastic shortening of Plaintiffs' case; he wrote in the "Summary" that "the Court must and does presume that the evidence gathered by Andrew did not favor Plaintiffs," because they hadn't introduced it.**[p. 40]

• Despite the existence in the evidence of different and conflicting expert analyses of the alleged seco-barbital content in HAMPTON's blood, and a serious question as to whether he was drugged to set up the raid, the Judge wrote, in an outrageous example of how he tried the facts himself (see Section III below), that "the evidence showed" that according to the Defendants' toxicologists, Plaintiffs' toxicologist "was in error." [p. 43]

• Despite the fact that all the evidence showed that FRED HAMPTON was killed after DEBORAH JOHNSON and LOUIS TRUELOCK had left the south bedroom, and that there was no evidence to contradict this, Judge Perry wrote that the evidence was "conclusive" that he died while they were still in the room. [p. 42]

*Prior stipulations are valid evidence as an admission. Douds v. Seafarer's International Union, 148 F. Supp..953,957 (EDNY 1957.)

**This presumption by the Trial Court is inapplicable, as both sides had equal access to the Andrew evidence. It is also disingenuous; the Trial Court knew, through Plaintiffs' offer of proof by Robert Zimmers' expert testimony, that the Andrew evidence was not unfavorable to Plaintiffs. On the contrary, it supported the proof that at most, one shot was fired by the occupants of the apartment, compared to 82-99 shots fired by the raiding policemen.

The District Court's Summary further confirms that he imposed an improper burden of proof on Plaintiffs. The Court said that, by April 15, 1977, the evidence before the Court made a prima facie case of the use of excessive force by the seven Defendants who actually fired their weapons during the raid. [p. 13] As to these Defendants, the Court denied their motion for directed verdicts on three counts, and directed them to put on their defense; then he directed verdicts in their favor when the jury had deadlocked.

The Court states, at p. 45 of his Summary:

> Plaintiffs did not prove their allegations that the seven remaining defendants intentionally or negligently deprived plaintiffs of their civil rights by illegal entry, assault and battery and other illegal acts and their allegations regarding the wrongful deaths of Hampton and Clark."

Since there was copious evidence from Plaintiffs about illegal entry, assault and battery, and wrongful death, and since there was no evidence put forward by Defendants which did not raise questions for the trier of fact, and none which negated any element of Plaintiffs' prima facie case (as previously acknowledged by the Court), one must conclude that the Court tested Plaintiffs' evidence against the shooters with an erroneous standard. As he put it himself:

> Evidence of a conspiracy must be clear and convincing, and the burden of proof was upon the plaintiffs to prove the existence of the alleged conspiracy by a preponderance of the evidence. [p. 19]

This obvious misstatement in no uncertain terms by the Court is enough by itself to require reversal in this case.

The rulings of the District Court, on their face and as expounded in the Summary, reveal that he discounted and disregarded much of Plaintiffs' documentary, physical and testimonial evidence, and thus invaded the province of the jury, by weighing the evidence and assessing the credibility of the witnesses; an error for which he had been previously reversed by this Court

in Pinkowski v. Sherman Hotel, 313 F.2d 190 (7th Cir. 1963); Riggs v. Penn Central Railroad Co., 442 F.2d 105 (7th Cir. 1971); and Byrd v. Brischke, 466 F.2d 6 (7th Cir. 1972).

It is elementary that conflicts in the testimony must be resolved in Plaintiffs' favor. Ziegler v. Equitable Life Assurance Society, 284 F.2d 661 (7th Cir.1960);Keaten v. Atchison, Topeka and Santa Fe Railroad, 321 F.2d 317 (7th Cir. 1963); 5 Moore, Federal Practice, pp. 2315-16 (2d Ed. 1951). This Court has stated:

> In testing the correctness of the district court's ruling granting defendants' motion for directed verdict, we must consider only the operative facts favorable to plaintiffs, disregard conflicting and unfavorable testimony, and draw legal inferences most strongly in her favor.

Kish v. Norfolk and Western Railway Co., 426 F.2d 1132 (7th Cir. 1970).

Other courts have asserted that the trial judge, when ruling on defendants' motion for directed verdict, has a "duty to accept the plaintiffs' version as true for the purposes of the motion, notwithstanding the existence of strong testimony to the contrary." Simpson v. Skelly Oil, 371 F.2d 563 (8th Cir., 1967); See also, Jackson v. Continental Casualty Co., 226 F.Supp. 782 (S.D. Iowa 1967), aff'd, 400 F.2d 285 (8th Cir.,). It is essentially a question of law:

> The rule is well established that defendants' motion presents only a question of law as to whether, where all evidence is considered together with all reasonable inferences most favorable to plaintiff, there is a total failure or lack of evidence to prove any necessary element of plaintiffs' case.

Riggs v. Penn Central Railroad Co., supra. See also, Texas Continental Life Insurance Co. v. Duanne, 307 F.2d 242 (6th Cir. 1962).

The Court is not the finder of fact. The credibility of witnesses can be of no concern to a judge determining a motion for directed verdict in a

jury case. Byrd v. Brischke, supra; Riggs v. Penn Central Railroad, supra; Pinkowski v. Sherman Hotel, supra; Texas Continental Life Insurance Co. v. Dunne, supra; Krindler v. Betuminous Casualty Corporation, 409 F.2d 88 (5th Cir. 1969); Brady v. Southern Railway, 320 U.S. 476, 64 S.Ct. 232 (1943).

In Johnson v. Baltimore and Ohio Railroad Co., 65 FRD 661 (ND Ind. 1974), the court noted:

> The right to determine the credibility of witnesses lies at the heart of the jury's function. If there is conflicting testimony on a material issue, the court may not grant a directed verdict or a judgment notwithstanding the verdict because the court believes one witness and does not believe another. A conflict of this kind can only be resolved by the jury. Ibid. at 663.

In Hirsh v. Archer-Daniels-Midland Co., 288 F.2d 685 (2nd Cir. 1961), the court held that the district court erred in directing a verdict for defendant even where "the plaintiffs' story may well have seemed incredible to the trial judge," for "it was not for the judge to resolve the issues of fact." Ibid., at 685-6.

Similarly, the Court must not engage in the weighing of evidence in considering a motion for directed verdict, Pinkowski v. Sherman Hotel, supra; Simpson v. Skelly Oil, supra; Cockrum v. Whitney, 479 F2d 84 (9th Cir. 1973); Gunning vs. Cooley, 50 S.Ct. 231 (1929). In Burchell v. Kearney-National Corp., Inc., 468 F2d 384 (3rd Cir. 1972), the Court said, at 387,

> "If, as appears on its face, this ruling represented a weighing of the preponderance of the evidence by the trial court, it was a usurpation of the function of the jury. It was for the trier of the facts to determine the preponderance of the evidence so long as any evidence supported the plaintiff's theory of the case."

In this Circuit, like all others, "(i)t is for the trier of fact, however, not the judge on a motion for directed verdict, to determine the extent to which testimony corresponds to the actual facts." Kudelka v. American Hoist & Derrick Co.,

541 F2d 651 (7th Cir. 1971).

In point of fact, the Court's error in this regard goes further than the mere wrongful weighing of evidence --to total acceptance of the defendants' version of what occurred. [pp. 36-42]. He completely ignored the weight of plaintiffs' trial testimony, the physical evidence, and the expert ballistics testimony, which showed the murderous assault and sadistic abuse perpetrated against plaintiffs in the cold, dark, early hours of that day; he mentioned the plaintiffs' version of the raid in his Summary only when quoting from attorney-client statements given by several plaintiffs where they differed from those plaintiffs' testimony at trial.

Judge Perry simply decided that he did not believe the plaintiffs, despite his duty to accept their evidence as true for purposes of defendants' motion. Thus he felt free to conclude that "at no time" did any of the defendant raiders

> "...use more force than necessary to serve said search warrant. The evidence showed that each of them acted in good faith at all times before during and subsequent to the service of said search warrant and there was probable cause for the acts of each and every defendant named herein to act as he did (sic)" [p. 19]

Such a conclusion, besides being utterly incredible in light of the actual record of unrebutted physical evidence of the assault, proves irrefutably that the Judge co-opted the trial of the facts. Cockrum v. Whitney, supra; Morgan v. Labiak, 368 F2d 338 (10th Cir. 1966); 6 C.J.S. Arrest, Sec. 13(a), at p 613. Of course, it was also for the jury to decide the question of probable cause. Marland v. Keyse, 315 F2d 312 (10th Cir. 1963); Draeger vs. Grand Inc., 504 F2d 142 (10th Cir. 1974).

The lamentable reality is that Judge Perry was so intent on winning the case for the defendants that he did not even scruple to supply evidence of his own, to shore up their case where he thought it was weak. At p. 42 of the Summary

he wrote that "Gorman, believing the occupants of the front bedroom would not come out voluntarily, went into the front bedroom. He said a figure with a gun fired at him..." But there was no evidence at all that any shot was or could have been fired from inside the front bedroom, and, in fact, Gorman never testified that anyone shot at him after he entered that room and neither did anyone else. The Court in this connection basically relied on the theory put forward by Officer Kelly to the Federal Grand Jury [PL 417, offer of proof]:

> "Q. Now if a shot had come out of that front bedroom, where would it logically have gone?
>
> A. Well, we have been talking about that for several months and I don't know. Maybe it got on an air hook."

PART FOUR: THE SUPPRESSION OF EVIDENCE IN THE COURT BELOW

I. THE STRUGGLE FOR THE F.B.I. EVIDENCE

A. BEFORE THE TRIAL

1. Production of O'NEAL

After remand of this case to the District Court in 1973, the Plaintiffs began discovery.* Having learned through testimony in U.S. v. Robinson that WILLIAM O'NEAL was a paid informant for the F.B.I., the Plaintiffs sought to depose him. Since he had been given a new identity and location by the government after that trial, there was no way to serve him except through the government, and plaintiffs therefore sought to effect service through the United States Attorney's Office, or, alternatively, to discover his new identity and address through government counsel in Robinson, Charles Kocoras. These subpoenaes for deposition, together with a subpoena duces tecum on ROY MARTIN MITCHELL for deposition were returnable October 11, 1973.** Plaintiffs asked for records of information supplied by MITCHELL and O'NEAL to the F.B.I., the Chicago Police, and the State's Attorney's Office, and about the occupants of 2337 West Monroe Street and their activities, from November 1 until December 4th, 1969. The government moved to quash these subpoenas, but the Court held that the Plaintiffs had the right to depose O'NEAL, under appropriate security provisions. In a written order, the Court found that the government had custody of O'NEAL, retained personal jurisdiction over him for the duration of the case, and ordered that he be produced for deposition.*** He

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* The District Court had suspended discovery before it was begun during the pendency of the Hanrahan trial.

** See subpoenas on: Charles Kocoras, WILLIAM O'NEAL, c/o U.S. Attorney's Office; and ROY MARTIN MITCHELL.

*** Order of 12/7/73. For the only time in the entire proceedings, the Court certified this order for immediate appeal under 28 U.S.C. 1292.

took the motion to quash MITCHELL's subpoena under advisement. The government did not appeal the order, and O'NEAL was deposed in January of 1974 in Detroit, produced and guarded by the U.S. Marshall's Service.

2. The First MITCHELL Subpoena

On March 5, 1974, Plaintiffs reissued their subpoena duces tecum for MITCHELL's deposition, with a revised schedule of documents, calling for all information supplied by O'NEAL on the Plaintiffs and the Black Panthers in Chicago from 1968 through 1970, and all information concerning activities of the Plaintiffs. On March 11, 1974, the government informed the Court that they were in the process of complying with the subpoena, and that a "truckload -- possibly a semi-trailer"-- of documentation was being reviewed. [3/11/74, p. 4]

On April 19, 1974, the government turned over 34 documents (237 pages total) in open Court. Of these 34, roughly 20 (50-75 pages) contained information supplied by O'NEAL.* One contained a sketch of the floorplan of the apartment drawn by MITCHELL and O'NEAL which, on its face, showed that it had been given to the State's Attorney's Office. [PL#21]** The government, by Mssrs. Sheldon Waxman and Arnold Kanter, filed with these documents on April 19, 1974 an affidavit of F.B.I. Agent Thomas Vorenberger, who averred that, pursuant to the subpoena on MITCHELL and the instructions of the U.S. Attorney's Office, he had searched the F.B.I.'s files on the Plaintiffs and the Black Panther Party, and that the 34 documents submitted were the only ones found which were "pertinent" to the MITCHELL subpoena. The government attorneys affirmed this position themselves in open court.

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* The remainder were lengthy F.B.I. reports written in connection with the Federal Grand Jury investigation.

** PL#22 and 23 were also among the documents.

MITCHELL was then deposed at three sessions in late April and early May, 1974. He denied any knowledge of the Counterintelligence Program except to state that it had nothing to do with the December 4th raid.* [Dep., p. 78-93] At the deposition, Plaintiffs requested additional materials from government counsel, Waxman and Kanter, including records of MITCHELL'S payments to O'NEAL as an informant; and asked also for disclosure of certain portions which had been deleted from the documents --such as names of the authors. In July of 1974, the Plaintiffs filed a Rule 45 Motion to Compel Compliance with the MITCHELL subpoena. The government, in lieu of producing the payment documents, provided an affidavit of MITCHELL reciting amounts paid to O'NEAL, [PL#WON #1] and some of the deletions found in the 34 documents.**

In July 1974, the Plaintiffs subpoenaed MARLIN JOHNSON duces tecum for deposition, again seeking the F.B.I. files on the Plaintiffs, and the Black Panther Party, instructions and directives to JOHNSON from the Director of the F.B.I., and records about the Counterintelligence Program and the Federal Grand Jury investigation.*** The government produced no documents pursuant to this subpoena, and Defendant JOHNSON refused to answer questions about, inter alia, the Counterintelligence Program and the Federal Grand Jury proceedings.****

3. Joinder of Federal Defendants

On December 3, 1974, Plaintiffs asked and got leave to file an amended complaint which joined MARLIN JOHNSON, ROY MITCHELL, ROBERT PIPER and

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* The Government permitted this disingenuous denial by MITCHELL but later would not permit co-defendants PIPER and JOHNSON to endure any questions concerning the Counterintelligence Program (COINTELPRO).

** With letters to Flint Taylor from Arnold Kanter of 8/7/74 and 8/26/74.

*** The request for instruction directives was somewhat general in nature, i.e., communications and directives between SAC Chicago and Director, F.B.I., while the Grand Jury materials included all communications between JOHNSON, the F.B.I. and Jerris Leonard and his FGJ Staff.

**** See Motion to Compel MARLIN JOHNSON filed 2/27/75.

WILLIAM O'NEAL as defendants. The Plaintiffs alleged that these Federal defendants had directed and implemented a counterintelligence program in Chicago which included the use of illegal wiretaps, burglary, agent-provocateurs, false arrest and prosecution, and illegal raids against the Black Panther Party in Chicago --and specifically against the Plaintiffs; that the aims and goals of this program were to disrupt and neutralize the Party, and to prevent the rise of leadership within its ranks; and that an important tactic of this program was to provoke and solicit local law enforcement agencies to raids and violence against the Black Panther Party, and thereby cause its destruction. They alleged that the Defendant MITCHELL, in furtherance of this program, had obtained a detailed floorplan of Hampton's apartment from Defendant O'NEAL which he had supplied to the State Defendants, whom he helped to plan an illegal raid. They alleged that after the raid the Federal Defendants conspired further among themselves, and with the State Defendants, to cover up the truth about the raid, and their involvement in it as well as to aid in the false arrest and malicious prosecution of the Plaintiffs.

The Complaint was served upon MITCHELL, JOHNSON, and PIPER, but summons was returned unserved as to O'NEAL.* On December 31, 1974, the Plaintiffs moved for an Order on the U.S. Marshall's Service, to serve the amended Complaint upon Defendant O'NEAL relying upon the Court's order which had established his jurisdiction over O'NEAL for the duration of the trial. The Court denied this Motion on January 15, 1975, saying he would not have issued such an order had he known O'NEAL might be joined as a party. [Tr.1/15/75, pp. 15-17]**

* The summons had been directed to O'NEAL in care of the Marshall's Service for the Northern District of Illinois, indicating that the U.S. Attorney's Office could give further instructions concerning service.

** This reasoning must be questioned in light of the colloquy between Plaintiffs' counsel and the Court on 12/4/73, where he informed the Court that discovery might lead to the joining of ROY MITCHELL as a defendant. [Tr. 12/4/73, p. 33]

4. The First Piper and Held Subpoenas.

In October of 1974, the Plaintiffs had subpoenaed Robert Piper, and in December, Richard Held, then SAC Chicago, duces tecum for deposition. The subpoenas again sought all information supplied by Piper and other Bureau informants on the Plaintiffs and the Black Panther Party, information concerning wiretaps against the Black Panthers in Chicago, instructions and directives,* counterintelligence documents, and any communications authored by Piper which concerned the raid of December 4 on the Plaintiffs. The Federal Defendants moved to quash the Held and Piper subpoenas, and argument was heard on January 15, 1975. A.U.S.A. Kanter told the Court he personally had reviewed the F.B.I.'s files, and the 34 documents already produced were the only ones that were relevant. [1/15/75, p. 21-3] The Court said it was not for the government to determine relevancy,** but then decried the amount of documents in the case and stated that discovery must come to an end. The Motions to Quash were taken under advisement and Piper was deposed, without additional documents, on January 16th. Piper refused to answer questions concerning the Counterintelligence Program, the Federal Grand Jury, his supervisory duties, the nature of his investigations, wiretaps, and informants.***

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* The Plaintiffs' proposed draft order, submitted after arguments on the Court's motion to quash the Held and Piper subpoenas, set this request out more clearly: "K. Any and all information or communications which contain or reflect information as to the directives, orders and memoranda containing periodic instructions from Seat of Government, SAC Chicago or Cointelpro to the Racial Matters Squad, Chicago, concerning the nature and scope of the activities of F.B.I. agents and employees against the BPP insofar as said activities concerned or affected the Plaintiffs.

** The Court would repeatedly state that the Supreme Court had determined that the lawyers seeking the discovery should determine the relevancy [see, for example, Tr. 12/4/73, p. 11, 2/28/75, p.202], but then would consistently allow the defendants to determine relevancy.

*** See Motion to Compel Robert Piper, filed 2/27/75.

5. Government Tenders Counterintelligence Documents to Court Ex Parte

On February 14, 1975, the Government filed a notice of in camera submission, and delivered to the Court vacationing at his home a packet of Counterintelligence (COINTELPRO) documents purportedly responsive to the subpoena on Richard Held.* The Plaintiffs filed opposition to this submission, but the Court went ahead and examined the documents before argument was heard on the propriety of the submission. [Tr. 2/27/75. p. 157-8] Among those documents, it was later learned, were the Jeff Fort "hit letter" memos, [PL 10-13] a memo which acclaimed the 12/4/69 raid as a counterintelligence achievement, [PL#25] documents which showed O'NEAL to be implementing counterintelligence operations and acting as provocateur, [PL#16, 17, and 19] and a directive from F.B.I. headquarters in Washington which called for measures to "cripple" the Black Panther Party. [PL#6]**

6. Plaintiffs' Move to Compel the MITCHELL, JOHNSON, PIPER and Held Discovery

Plaintiffs filed motions to compel answers from JOHNSON and PIPER on 2/27/75 and argued them along with the motion to compel MITCHELL's compliance (pending since 7/74), and motions to quash the subpoenas duces tecum on PIPER and Held.*** Plaintiffs reiterated the importance of discovery concerning the Counterintelligence Program, [Tr. 2/27/75, pp. 149-51] and the Court again decried the discovery rules and complained that discovery had "run wild" in the Federal Courts. [2/27/75, pp. 151] The Court requested draft orders and determined that he would review the counterintelligence documents in camera. [2/27/75, pp. 157-8]

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* The government made the submission because the documents were "irrelevant." [2/27/75, p. 128]

** See Tr. 2652-3, 779-80, 3054-7, 3096-3108, 313-17; 3120-32, 3245-7.

*** See Tr. 2/27/75, 110-158; 2/28/75, 200-254.

7. The Court's March 31st Order

On March 31, 1975, the Court signed the draft order presented by the government, disposing of the motions to compel without directing the deponents to answer any of the questions they had refused. It found that the Counterintelligence documents examined in camera were "irrelevant and immaterial" and should not be released to the Plaintiffs. It ordered that documents which contained information concerning the Plaintiffs,* or the December 4th raid, or which was disseminated to other state or federal agencies,** should be turned over. The order further directed that the Plaintiffs be told who wrote the various documents, but not the internal distribution of the document [order of 3/31/75].***

In June of 1975, the Plaintiffs received 193 heavily excised documents in response to this order, including one extremely important document [PL#24], and twenty others which they ultimately offered at trial.**** Plaintiffs then spent the summer attempting to discover evidence to buttress their claims, but were met with repeated refusals by F.B.I. witnesses to answer any questions about intelligence/counterintelligence activities, programs and policies dir-

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* This included documents which summarized conversations by the Plaintiffs over the F.B.I. wiretap of the Black Panther Party offices which were disseminated.

** This rule neatly exempted all documents which contained relevant --and damaging-- information, such as the F.B.I.-taking-credit-for-the-raid document [PL#83], because the information was not supplied to other State or Federal agencies!

*** Additionally, it provided for material concerning the F.B.I.'s preliminary investigation of the raid, but not the Federal Grand Jury investigation.

**** These 21 were so heavily excised that the key part of the document -- either initials of the defendants or a key bit of information-- in 12 instances was not supplied until March 9, 1976.

ected against the Black Panther Party. The Court's order of March 31, 1975, was invariably cited as the basis for these continued refusals.*

8. Plaintiffs Finally Obtain Service on O'Neal

In early July, the Plaintiffs noticed Defendant O'Neal for a second deposition,** attempting to serve the subpoena on the U.S. Marshal, who refused it. They moved the Court to order production of O'Neal for deposition and service.*** The Court asked the government to see if they could "work something out," but Mr. Kanter reported on August 28th that, "after asking everyone he could think of," he could not locate O'Neal. [Tr. 8/28/75, pp. 25-6]

The Plaintiffs said they would pursue outstanding subpoenas for deposition on former U.S. Attorney Waxman, Kocoras, and others who had knowledge of O'Neal's whereabouts in the past. The Court ordered the government to contact the Attorney General and Chief U.S. Marshal, and obtain their representations that they did not know where O'Neal was. [Tr. 8/28/75, p. 30] Court was adjourned for the Labor Day weekend, and former U.S. Attorney Waxman was quoted in the Chicago Sun-Times as saying the government did know where O'Neal was. On September 1, O'Neal was again placed under the Witness Protection Act, with payments of $1080.00 per month (which continued at least until February, 1977 [Tr. 22793,23253]). [PL WON#13] On Tuesday, September 2, Kanter informed the Court that he had "found" O'Neal's phone number, and called him, and that

* See generally depositions of Special Agents Herman Scott, James Gerblick, Hugh Hart, and Alan Stephans. The government, as well as using the 3/31/75 order to limit the scope of questions in all areas (time period, subject matter, etc.) also used telexs from the Department of Justice which, pursuant to administrative regulations, narrowed the questioning to the order.

** The first deposition had been taken before any documents had been produced.

*** On April 10, 1975, a copy of the Complaint had been left at O'Neal's last known address with his father, in addition to requesting the assistance of the U.S. Attorney's Office in serving O'Neal. (This received no reply.)

O'Neal had agreed to come in for deposition. [Tr. 9/2/75, p. 3] The deposition was set for September 8th, with such secrecy that its very taking could not be revealed, even afterwards. At the deposition, O'Neal was served with the Complaint.

9. The Second Held Subpoena

In late August,1975, Plaintiffs renewed their attempts to subpoena documents from the F.B.I. containing information about F.B.I. policy and practice regarding the Black Panther Party both nationally and in Chicago.* They sought directives, memos, and instructions both from F.B.I. headquarters to the Defendants, and from one Defendant to another, concerning activities and programs directed against the Black Panther Party.** They sought the complete F.B.I. files on the Plaintiffs and William O'Neal --including records of payment and control-- as well as all information about the raid. They sought, with more specificity this time, COINTELPRO documents including those which detailed the use of Chicago street gangs against the Black Panther Party,*** as well as documentation of counterintelligence activities, such as wiretaps of Hampton's apartment and burglaries of the Chicago Panther offices.**** Plaintiffs also sought documents reflecting the policy of inducing local law enforcement operations against the Black Panther Party,***** and evidence of wiretaps, surveillance, burglaries, and other counterintelligence activities

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* This subpoena was alternatively directed to the defendants as a Rule 34 demand [2nd Held subpoena, served 8/27/75, filed 8/29/75]. A similar subpoena (the requests for policy) was directed at Clarence Kelly in Washington.

** Held subpoena, Para. 1-4, 6-7, 12, 31, 32, 33, 61, 87 and 91.

*** Held subpoena, Para. 12(B). In this request, Plaintiffs also sought COINTELPRO actions against the Panthers in the "COINTELPRO SPECIAL OPERATIONS" Section, which are secret to this day (January, 1978).

**** Held subpoena, Para. 16, 35, 76.

***** Held subpoena, Para. 12(A).

against the attorneys representing the Plaintiffs on their indictment and in this litigation.*

The government moved to quash this subpoena, invoking the March 31, 1975, order they had written as the law of the case on discovery, and repeating the now familiar refrain that "the BPP was not a party to the suit." Both Mr. Kanter and Ms. Kwoka again represented to the Court that they had reviewed all F.B.I. files on the Plaintiffs and the Black Panther Party:

> MR. KANTER: Ms. Kwoka and I have both reviewed the files.
>
> MS. KWOKA: We have reviewed the files of the Black Panther Party as well as the individual plaintiffs in this lawsuit. It is not as if we only reviewed the file for Fred Hampton, your Honor, or the plaintiffs; we have also reviewed the files of the Black Panther Party.
>
> MR. KANTER: Your Honor, we have not discovered any such floorplan . . .

[Tr.9/8/75, p.20]See also pp. 16.

The subpoena was argued on two occasions, and denied, in toto, on December 15, 1975, as "not well taken." [Minute order of 12/15/75]**

10. COINTELPRO Discovery Is Again Obstructed.

In September 1975, the Plaintiffs again noticed the depositions of the F.B.I. Defendants along with those of certain high-ranking F.B.I. officials who the Plaintiffs had learned were among the architects of the COINTEL-

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* Held subpoena, Para. 38, 39, 40. Other documents of special significance were documents of surveillance of Hampton prior to 1969 (Para. 53-59), as well as the identity of what agent was assigned to Hampton's investigation (Para. 28), a "blueprint" of the Chicago Black Panther Party offices drawn by Defendant O'Neal (Para. 42), instructions and memos concerning the payment, control, etc. of O'Neal and other F.B.I. informants (Para. 7, 15), and Defendant O'Neal's confidential informant file (Para. 27).

** Discovery was originally to close on August 28, 1975, but was extended until September 25, 1975.

PRO program and policy (especially as it applied to the Black Panther Party*), including William C. Sullivan, the head of the Domestic Intelligence Division, and Charles D. Brennan. The Plaintiffs moved in advance of these depositions for an order permitting questioning on the Counterintelligence Program [see Motion to Compel filed 9/9/75]. The Plaintiffs, both by oral and written motion, explained to the Court that they sought to pose these questions in order to obtain evidence tied directly to their Complaint. The Court responded by threatening to strike those portions of the Complaint, and said "the Black Panther Party is not a party to this suit." [Tr. 9/11/75, pp. 8-12]** The Court reexamined the in camera Counterintelligence documents, and again found them to be irrelevant. The Court restricted Plaintiffs to questions concerning what these deponents "knew or did" about the Plaintiffs --guidelines which he called the position of the government.*** The deponents then declined to answer any policy questions, including whether Sullivan and Brennan devised the Counterintelligence goals of "prevent[ing] the rise of a 'messiah'" and "neu-

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* The motion, filed on 9/9/75, spelled out how the Counterintelligence program was a key element in Plaintiffs' allegations, and also brought evidence released in other litigation which established that the program had used the methodology of raids and arrests as both a policy and a tactic to disrupt political organizations.

** The Court had taken a sharply contrasting position on a subpoena that the Plaintiffs had served on the Chicago Police Department Intelligence Division for their complete files on the Plaintiffs and the Black Panther Party -- as he had ordered that file (some 7500 pages of documents) produced. [See order of 5/1/75] The City Defendants and the Court devised a different method to obstruct discovery with regard to these documents, however, as the Court upheld the Defendant's right to withhold the authors of the documents, making the documents useless pieces of paper. Additionally, although Gang Intelligence Police Officers (G.I.U. was part of the Intelligence Division) who had been involved in planning the G.I.U. raid on 2337 West Monroe in late November had testified at deposition that they had written documents concerning this planned raid, no such documents were turned over by the Defendants; the Court denied Plaintiffs' motion to compel. [See Motion to Compel Intelligence Division, Tr. 8/28/75, pp. 33-54, 8/29/75, Tr. 9/4/75, p. 11]

*** Order of 9/16/75.

tralizing and disrupting" the Black Panther Party;* and whether Defendants Johnson, Piper, and Mitchell had knowledge of, or were acting pursuant to, these directives when they participated in the counterintelligence activities which led to the December 4, 1969 raid.

The federal Defendants did give vague answers about some of the counterintelligence activities expressly directed against Hampton by name --the arrest of Hampton on television, a false anonymous letter from the Vice Lords street gang, and another to National BPP headquarters criticizing Hampton's leadership. Johnson also testified that one counterintelligence report "mentioned weapons at 2337 West Monroe."** In December the Plaintiffs moved to compel Sullivan, Brennan and the Federal Defendants, a motion apparently denied as "not well taken."***

11. Subpoena on Department of Justice

Also in late August, the Plaintiffs sought evidence of involvement of the F.B.I. defendants and Department of Justice attorneys in the cover-up of the events surrounding the raid, with specific emphasis on the role of the January 1970 Federal Grand Jury.**** Based on (PL#24), Plaintiffs asked

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* This made Sullivan's and Brennan's depositions next to useless, as they need not have any memory of the day-to-day conterintelligence activities in Chicago as directed against specific individuals such as the Plaintiffs. [See depositions of Sullivan and Brennan.]

** See 2nd Johnson deposition, pp. 73-108. Compare PL#16, 17, 25, 34. The Defendants avoided testimony about the Jeff Fort "hit letter," apparently because it did not mention Hampton's name directly but only talked about "retaliatory action" against the Chicago BPP leadership. [See PL#10-13]

*** Minute Order of 12/15/75. Although he issued no direct order on this motion, this order denies requests for the retaking of depositions and, therefore, appears to dispose of this motion.

**** Subpoena on Custodian of Records, Justice Department, served 8/27/75; 2nd Held subpoena, Para. 10, 11, 23-25, 48, 82; Kelley subpoena, Para. 10, 11, 23-25.

for evidence that Jerris Leonard,* with the aid of the F.B.I. defendants, covered up the F.B.I. role in the raid, and struck a deal whereby Hanrahan and his police would not be indicted by the Federal Grand Jury, in exchange for Hanrahan's continued silence concerning F.B.I. involvement.** The Court refused to order production of this evidence.*** Plaintiffs had learned from other sources that much of the manipulation of this Grand Jury had occurred in off-the-record discourses to the jurors by Leonard and his staff, and moved for leave to question Leonard about these discussions; this request was likewise denied.****

12. Senate Committee Revelations: the Plaintiffs Again Move For Counterintelligence Documents

While the District Court continued to deny Plaintiffs' attempts to obtain this evidence, much information was being uncovered by the Senate Select Committee on Intelligence which buttressed their claim that highly relevant material was being withheld from them. In November 1975 the Committee revealed the details of the F.B.I.'s Counterintelligence program to destroy Martin Luther King --which included attempts to drive him to suicide and to replace him with their own "leader." The Committee also released COINTELPRO documents which showed the F.B.I.'s program to "cripple" the B.P.P. --including the Jeff Fort "hit letter" and the Bureau's program in San Diego which

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* Leonard, it was learned through the Rockefeller Commission Report on the CIA, published in the Spring of 1975, was at the time of the raid and the Federal Grand Jury secretly the head of an intelligence gathering operation, called the Civil Disturbance Group. This group included representatives from the CIA, the FBI, and the Justice Department, and gathered intelligence on the nation's black ghettos. (See Report, pp. 116-125.)

** One document (PL#24) which had already been turned over set forth the outlines of this deal. [PL#24, O.P.]

*** Order, December 15, 1975.

**** Oral order, September 11, 1975, at pp. 5-7.

claimed credit for four B.P.P. deaths and for ghetto violence.* Additionally, Charles Brennan's testimony before the Committee revealed widespread F.B.I. burglaries --some directed against the B.P.P.-- and secret "DO NOT FILE" files where the evidence of such illegalities was hidden. These revelations had great impact throughout America, and caused the Justice Department to reopen the investigation of the King assassination.

Pursuant to these new revelations, the Plaintiffs, in early December, 1975, filed a Motion for Discovery and Disclosure of Evidence, seeking to reopen the Judge's prior rulings and obtain relevant evidence of counterintelligence activities, including the materials he held in camera.** Before the government even filed their response, however, the Court, ignoring the merits of Plaintiffs' claim, denied the Motion as "not well taken."*** Plaintiffs then twice moved for clarification of the order, **** attempting to learn from the Judge whether he indeed had knowledge or possession of the documents Plaintiffs sought. The Court's response was to strike plaintiffs' Motion to Clarify from the record as "scandalous."***** During the period he was considering these

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* The documents released included facsimiles of PL#61, pp. 10-13, and 120-122 O.P.

** See Motion for Disclosure and Discovery of Evidence with Memo and Appendix, filed 12/3/75.

*** Minute Order of 12/15/75. While finding the Government had acted in good faith, he did, however, order them to again review their files, and produce everything already not produced referring to or about the Plaintiffs. Order of 12/15/75.[Appendix B]

**** Motion to Clarify, filed 12/17/75.

***** Proceedings, 12/17/75; 12/19/75; Order of 12/29/75. The Court took extreme exception to a part of the Motion which stated that by his refusal to order production of these documents he was either invading the province of the jury or participating in Defendants' coverup of evidence. [See Appendix B]

motions, the Judge told former U.S. Attorney Waxman that the Plaintiffs "will never prove that the F.B.I. killed those fellas," and that the counterintelligence documents were not relevant.*

13. Plaintiff's Move to Join Hoover, William Sullivan, and Other F.B.I. and Justice Department Defendants.

Just before the trial began, the Plaintiffs sought to join J. Edgar Hoover's Estate, William Sullivan, Charles Brennan, John Mitchell, Jerris Leonard, and several other F.B.I. and Justice Department officials named as unsued co-conspirators in the Complaint, as additional defendants, based on the new evidence revealed to the Senate Committee.** The Court denied this motion.

B. DURING THE TRIAL

1. The Court Shifts Ground: "I Am Not Solomon."

The trial began with the Plaintiffs having received from the Federal Defendants 210 carefully screened, and highly excised documents. The Plaintiffs would offer 27 of these --about 11% of all the F.B.I. documents they would offer-- and of these, fully one third were so highly excised that the actual contents for which they would later be offered (i.e., initials of the Defendants, or important information) were still unknown to Plaintiffs.

On January 16th, the Plaintiffs filed identical trial subpoenas duces tecum on Richard Held, Robert Piper, Roy Mitchell, and Marlin Johnson. These

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* Affidavit of Sheldon Waxman. See Appendix A. The Plaintiffs drafted a mandamus to be filed on the eve of trial which raised the Court's discovery rulings and comments to Waxman. Unfortunately, they did not file the mandamus and likewise did not file Waxman's affidavit in the trial court until after the Court's directed verdict rulings in April of 1977.

** Motion for Leave to Join, filed 12/30/75. These proposed Defendants were intimately involved in the counterintelligence program or the Federal Grand Jury coverup.

subpoenas sought Counterintelligence (COINTELPRO) documents, many of which had been revealed by the Senate Committee (para. 1-9), the complete F.B.I. files on the Plaintiffs* and William O'Neal, and all documents concerning O'Neal's custody and witness status "vis-a-vis" the government (para. 10 and 11). After the jury was selected, the Court, on January 27, 1976, declaring that he was "not Solomon," and admitting to having made a "mistake" in allowing the Federal Defendants to determine the relevancy of the documents, ordered that the complete O'Neal and Plaintiffs files be turned over, as well as the Counterintelligence documents which the Plaintiffs sought. [Tr.2764]

On the 28th, the Court reiterated that O'Neal's complete file was to be produced. [Tr.2874] Counterintelligence documents that the government deemed responsive to the subpoena (including those previously held in camera by the Court) were turned over to the Plaintiffs, and hearings were held from February 2-4, 1976, to determine the propriety of the deletions made by the Defendants. Among the deletions were all the Defendants' initials showing they had read or approved a given memo or report, which the Court then ordered supplied. [See generally, Tr.3027-3308 I.C.]

The Court sustained all deletions which did not mention the Black Panther Party directly, and, on at least two occasions, without any claim of privilege by the government, upheld deletions as being "very sensitive," saying revelation would be "disastrous to the national defense." [Tr.3047-8, 3086-92 I.C.]** He originally stated that he would order the names of the "messiahs" targeted by the counterintelligence program, [Tr.3519-23] while upholding deletion of

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* The use of Plaintiffs in this brief includes Plaintiff-Decedents Fred Hampton and Mark Clark.

** Counterintelligence documents of 7/5/68 and 12/12/68. While Plaintiffs have not seen these documents, it seems highly unlikely that this material would in fact have any effect on national defense, and urge the Court to review these deletions.

the organizations so targeted, [Tr.3522] then reversed his field the next day, going on to delete a crucial part of PL#2 which the government had originally disclosed. [Tr. 3729-3827]*

On February 2nd, the Plaintiffs moved to reopen discovery in order to depose the F.B.I. defendants and other key members of the counterintelligence program about the contents of the new documents.** The Court at first voiced approval of the taking of evidence depositions of Moore, Brennan, and Sullivan, [Tr.3015-16] but later denied the motion. [Tr.5154-72] The Court also allowed a "limited discovery" voir dire of Johnson, purportedly on the 100-odd counterintelligence documents turned over by the government. The voir dire was reduced to a chorus of objections by defense counsel, and "I don't recalls" by Johnson, and the Plaintiffs were forced to put Johnson on the witness stand blind, after he was voir dired about only <u>one</u> document. [Tr.3550, 3592-56, 3363-71]

When Johnson began his testimony on February 6, 1976, the Plaintiffs were still receiving documents from the O'Neal and Plaintiffs' file.***

2. <u>Government Represents that They Have Produced the Complete Files</u>

On February 5th, the Plaintiffs served their second trial subpoena on Richard Held, requesting policy, instructions, and directives to the Defendants and the Racial Matters Squad, information concerning payments to

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* The government had originally supplied a paragraph stating that the F.B.I. had assisted local police in Philadelphia to get members of a local organization arrested on all possible charges as a part of the counterintelligence program --with the name of the organization (R.A.M.) deleted. The Court deleted the entire paragraph.

** They sought to depose Sullivan, Brennan, the Federal Defendants, as well as George Moore, Joseph McCabe and Joseph Stanley --whom the documents revealed to be coordinators of the Counterintelligence program against the Panthers in Chicago and nationally.

*** Although Johnson's testimony spanned nearly a calendar month, he only gave six days of direct testimony.

O'Neal, information supplied by F.B.I. informant Maria Fisher about the apartment, and wiretap requests and authorizations on both Hampton and the Chicago Black Panther Offices.* The government moved to quash this subpoena, and A.U.S.A. Kanter represented in open court that the Plaintiffs were getting the entire O'Neal file,** including all documentation concerning payments. [Tr. 4178-9] He also made the same claim in writing.***

On February 17th, Plaintiffs' counsel moved to suspend Johnson's testimony until they received all of the documents ordered produced on January 27. [Tr. 4316-26] The Court temporarily suspended his testimony and a limited voir dire of Defendants Mitchell and Piper as well as Chicago COINTELPRO agents McCabe and Stanley was conducted. [See Tr.4330-4790] The sole purpose of this voir dire was to identify the authors of the documents, and no substantive questioning concerning the subject matter contained in the documents was permitted.

On Friday, February 20th, the government completed its turnovers from the Hampton file, [Tr. 4795] and Johnson's testimony was resumed. On the 26th, fully a month after the Court Order, the government finished their turnover from O'Neal's files,**** again representing that it was the complete file. The

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* The same week the Plaintiffs served a deposition subpoena duces tecum on Clarence Kelly seeking documents kept at F.B.I. headquarters concerning the F.B.I. policy against the B.P.P.

** MR. KANTER: Any material pursuant to subpoena and your Honor's order, they are getting Mr. O'Neal's file, so if there are any instructions in the file, they will have them.
THE COURT: You are getting the whole of the file.
MR. KANTER: That is correct. [Tr.4178-9, 2/12/76]

*** Government's Brief in Support of Defendant's Motion to Quash Subpoena, at p. 2, ftnt.#1 [This Brief was in response to Plaintiffs' second trial subpoena on Richard Held and signed by Kanter]: "As to the documents requested in item 10 [various payment, instructions, and other guidelines concerning O'Neal] the Federal Defendants have furnished or will have furnished pursuant to the Court's orders of February 1976, the entire F.B.I. file of William O'Neal. The documents responsive to item 10(a), 10(b), and 10 of said subpoena will necessarily be produced when the said file is produced."

**** Among the documents turned over was a floorplan of the Panther Office of which Mr. Kanter had steadfastly denied the existence.

Plaintiffs contested this representation and the Court promised a hearing on the matter.* [Tr. 5159-60] At the same time, the Court quashed the second Held, as well as the Kelly, subpoena, and ordered that all further subpoenas must be issued with leave of Court. [Tr.5152-72]

On February 27th, the Plaintiffs finished their direct examination of Johnson, having introduced 22 counterintelligence documents [PL#1-20, 25] which they had not had prior to trial, and upon which they had been precluded from deposing him. They then called Stanley and McCabe to the stand, both of whom they had to put on without any prior questioning, save a limited voir dire. The Court refused to declare them hostile witnesses or allow them to be impeached or cross examined by Plaintiffs' counsel.** Through them, 15 additional counterintelligence documents were introduced, and they were questioned concerning these documents and the 21 previously introduced through Johnson.***

3. First Evidence of Non-Compliance With the January 27 Order Comes to Light

Plaintiffs then called Defendant Roy Mitchell to the stand. Prior to his testimony, Plaintiffs sought a hearing to review the government's deletions in some 40 documents that they contemplated questioning Mitchell about.**** During these hearings, held in camera, nine documents were discovered, all from the O'Neal file, which closely related to the documents be-

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* This hearing was never held.

** Although they were agents who worked directly under Piper and Johnson's supervision on the Racial Matters Squad, and despite the Court's previous recognition of the F.B.I.'s responsibility to aid its agents in their defense [Tr. 3584-5], the Court would not declare them hostile.

*** Either Stanley or McCabe had written each of these documents.

**** The vast majority of these documents were from the 193 pretrial documents and the trial turnovers.

ing reviewed, yet had not been produced for the Plaintiffs.* During these hearings, the initials of the defendants were supplied on several documents, as well as key information concerning Hampton's classification and targetting by the defendants.** At the conclusion of these hearings, Mr. Taylor asked for the government to represent that they had produced the entire O'Neal file, in light of the sudden appearance of nine new documents. Mr. Christenbury refused to make such a representation, but promised to do so in the future. [Tr. 6284-5]

4. Mitchell's Blunder: Government Concealment is Exposed

Mitchell then took the stand. On his third day of testimony, he volunteered an answer at the prompting of state defense counsel Coghlan.*** The information volunteered, although of a highly violent and prejudicial nature, and allegedly supplied by O'Neal, was not contained in any documents supplied by the government to the Plaintiffs. Mitchell testified that it was the kind of information that he would write down but he did not recall whether such a document existed. [Tr.6735-48] The Court ordered him to search for the document. [Tr.6737-48] Mitchell did not locate the document on the evenings of the 17th or 18th,**** and on the 19th the Court applied strong pressure for the Plaintiffs to finish their examination of Mitchell by the end of the day. [Tr. 7021, 6981]

Mr. Taylor again asked for the government's representation that the complete O'Neal file had been produced, and Mr. Kanter, for the third time, re-

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* See Tr.6059-61; 6067-8; 6094-5; 6116-18; 1647-51; 6165-7; 6238-41; 6261-63; 6268-71 (in camera).

** See Tr. 6157, 6100-1, 6057, 6065, 6098-9 (in camera).

*** Asked about a speech given by Hampton on November 23rd, he volunteered information concerning an incident the previous January, during which O'Neal told him that Hampton had "contemplated" killing a State trooper. [Tr.6737-48]

**** Mitchell said he went to bed rather than search on the 18th, which was heartily endorsed by the Court. [Tr.6976-9]

plied that it had. Mr. Taylor requested that an affidavit be supplied, but the Court denied that request. [Tr.6975-6]

On March 23rd, the Plaintiffs were given the morning to finish Mitchell's direct. Mitchell reported that he had found the document* the night before, that it was being excised and xeroxed, and that it would be ready that afternoon --after Plaintiff's direct was finished. [Tr.7085] The Plaintiffs protested that the non-production of this document was a violation of discovery. A voir dire was held at Plaintiffs' request, at which Mitchell testified that he had searched for the document in the Panther file and had not found it, and then went to the Powell file,** where he found it. He admitted that that document should have been located in the Hampton and O'Neal files but he did not look there.*** His later testimony established that he knew that the Hampton and O'Neal files had been ordered produced (and that the B.P.P. and Powell files had not been), and further that he had started searching the voluminous Black Panther file at a May date and worked backwards, chronologically, although he knew the document would be dated in January.**** [Tr.7525]

The Plaintiffs then moved for the complete O'Neal and Hampton files to be brought into open Court, and the Court so ordered. [Tr.7040-4] Mr. Kanter ad-

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* The document, [PL#D for voir dire, FDef.#2] became known as the "Rockford document" because of its subject matter.

** Powell was a Rockford Panther member whose name was mentioned in the document.

*** Normally, F.B.I. filing procedures would dictate that a copy of the documents be sent to the file of the subject organization [B.P.P.] as well as the members mentioned in the document [Hampton, Powell, Bruce, et. al.] and a copy to the confidential file of the informant who supplied the information [O'Neal] and Mitchell admitted that he should have followed that procedure in this instance.

**** He also started at the end of the Powell file, although it was the first document in the file, chronologically. [Tr.7929-31] The F.B.I. kept their files in chronological order, with documents serialized by consecutive date.

mitted in open court that the document was indeed located in the Hampton and O'Neal files but averred that it had not been produced due to "oversight." [Tr.7139] After an hour delay, F.B.I. agent Deaton, who was a trial assistant to the federal Defendants and their counsel and had assisted in the production of documents, was put on voir dire. Despite the Court's order, he had brought only one volume of O'Neal's files, and the Court then ordered the government to bring the entire files on Hampton, the Plaintiffs, O'Neal, and the Black Panther Party in to open court. [Tr.7166-71] After another recess, the government said that there were 135 volumes of files that were responsive to the Court's latest order, and Court was recessed until the morning in order that they be produced. The Court continued to refer to the withholding as a mistake, although Mr. Taylor, citing the nine documents revealed previously in camera, charged that a pattern of withholding was apparent. [Tr.7120, 7134]

5. The Government Produces 200 Volumes of Documents in Open Court

The next morning, the government produced almost 200 volumes* of files in shopping carts in open court, and the voir dire of Deaton continued. Deaton testified that he had worked on the production of files pursuant to the Judge's January order and that he had gotten his instructions from Kanter and from being in Court. [Tr.7164-5] He became aware that O'Neal's entire informant (14 volumes) and investigative (2 volumes) files were to be produced in late January.**[Tr.7165] He did not personally review

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* A volume of documents contained approximately 500 pages and 100 documents.

** An informant such as O'Neal would have two different files --an investigative file as have all other B.P.P. members under "investigation"-- to which all agents would have access and to which would send reports concerning O'Neal's activities as a Panther, and a confidential informant file where all of the information supplied by O'Neal, as well as all information concerning training, assignments, payments, etc., would be kept. Only Piper, Johnson, and Mitchell had access to this file, and others could gain access only by their permission.

the O'Neal files, but they had been reviewed at Defendant Piper's or SAC Held's request. [Tr.7165-6] In fact, he did not personally review any of the files, but went to Defendant Piper and another supervisor, Caryl Shupe* for manpower to review the files and informed them of the Court's order. [Tr.7224] Piper and Shupe, both Security Squad supervisors,** then assigned their men to review the files ordered produced. [Tr.7224] If an agent had a question as to whether a document was to be produced, he would go to Piper or Shupe, if available, and only to Deaton, if they were not. [Tr.7225] The agents pulling documents to be produced worked under the instructions of Piper and Shupe. [Tr.7226] Piper had told Kanter that both the informant and investigative files of O'Neal had been reviewed pursuant to the Court's January 27th order. [Tr.7222] Documents produced later indicate that Piper had held a key role in the review and production of the files in this litigation --at least since late 1974-- as he had been assigned the responsibility of coordinating the review and classifying of all Counterintelligence files [PL#133], and had met with Kanter and Shupe in early 1975 to discuss production of documents, including the Maria Fisher file-- in response to Plaintiffs' first pretrial subpoena on Richard Held.*** [PL#114 O.P.] Deaton was then asked to randomly go through the O'Neal files and describe certain documents. Of the 27 documents so selected, the Plaintiffs had not received 20 of them. [Tr.7189-7219, 7233-47, 7271-87]

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* Shupe was on the Racial Matters Squad under Piper in 1969 and apparently had primary responsibility for the wiretap on the Panther offices at 2350 W. Madison (see PL#73-76).

** Deaton was not a security squad agent, but rather was from a criminal or civil rights squad.

*** These documents came from the Iberia Hampton v. Daniel Groth F.B.I. file (17 volumes), which in all probability holds many of the details of the involvement of the defendants and their lawyers in this most recent coverup; the court, however, refused production of these files, or any part of them, because of "attorney-client privilege and work product."

6. The Court "Takes the Blame" for the Government Concealment

The Court, while acknowledging that the documents should have been produced, persisted in deeming it a mistake [Tr.7259, 63-5] or negligence on the part of the F.B.I. [Tr.7259, 63-5] He then informed the jury that it was a misunderstanding of his rulings and that they were to "blame him" rather than the parties or their lawyers. [Tr.7255] Deaton's hearing was then suspended and an agreed order was worked out by the parties. The order specified that the Plaintiffs were to receive a copy of each document from the Plaintiffs' and O'Neal's files, after deletions by the government which would be reviewed by the Court, and that the government was to produce for the Plaintiffs all documents from the B.P.P. file on which they did not claim a privilege and the Court would rule on any deletions, or withholdings based upon the Government's assertion of privilege.* [Order, 3/25/76] The Court, on the 24th, stated that he would defer sanctions until the end of the trial, [Tr.7299] and refused Plaintiffs' request to examine Government attorney Kanter concerning the withholdings.** [Tr.7111-2]

On the 25th, the Court told the jury that there was a "difference of opinion" as to whether the government had complied with his order and then, while implying that they had not, went on to explain that the F.B.I., not the defendants, had been responsible for the non-production. He then read the

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* In essence, the only distinction between the treatment of the Plaintiff's and O'Neal's files and that of the B.P.P. files was that the Government could claim privilege on entire documents in the B.P.P. files, but had to produce every document from the O'Neal and Plaintiffs files and could only delete portions of them upon which they claimed privilege.

** The Plaintiffs' repeatedly attempted to take evidence from these attorneys about the withholding, and added them to their list of witnesses, but the Court blocked any inquiry into their role, as well as that of Piper.

agreed-upon order to the jury and told them to "blame him" for the delays and, presumably, for the Defendant's wrongdoing. [Tr.7307-14] He then promised Plaintiffs' counsel "all the time they needed" to go through the documents that were to be produced. [Tr.7317]

The first volume of the Hampton file was produced on Friday the 26th, [Tr. 7333] and the Court recessed the jury until the next Tuesday after again teling them that the F.B.I. defendants could not be blamed for the F.B.I.'s role in any document controversy (although this liability could only properly be determined after a hearing on sanctions, which the court never held). [Tr. 7325-6] The Court began to hold "deletions" hearings on the Hampton file (the first volume), but only one document was reviewed,* as Defendants raised an objection which consumed the rest of the 26th and the 29th. [Tr.7339-7404; I.C.7408-53] This would be the only document of the some 35,000 pages turned over after March 23rd which the Court reviewed in the presence of the parties.** On the 29th, the Court ordered that testimony was to resume the next day, over the Plaintiffs' objections. He promised the Plaintiffs that they could recall Mitchell to examine him on any newly-discovered evidence, [Tr. 7446-8] and <u>again admitted that much of the problem was due to his permitting the Defendants to determine the relevancy of documents for the Plaintiffs</u>. [Tr.7425] He also acknowledged again that the Plaintiffs were supposed to have the entire O'Neal file "all along." [Tr. 7432]

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* Most of the afternoon was spent reviewing documents from another person's file which was attached to the beginning of Hampton's file because of F.B.I. filing procedures.

** He also claimed to have "spot checked" ex parte the <u>Iberia Hampton</u> file (17 volumes) and the B.P.P. which he did not require the Government to turn over. (See below.)

7. The Court Rejects Plaintiffs' Requests for Sanctions, Mistrial, and Adjournment

On March 30, the Plaintiffs filed written motions for mistrial, adjournment of trial until they received all the withheld documents, as well as motions for sanctions and contempt against the defendants and their attorneys. The Plaintiffs estimated that fully 95% of the documents ordered produced had been withheld, and even from the first volume produced, showed that useful evidence was among those materials and cited the involvement of Piper, Mitchell, and their lawyers in the withholding.* They moved for immediate evidentiary hearings on the sanctions and contempt motion --which sought default, and barring of defenses as part of its relief.** The Court repeatedly refused to hear the motions, and angrily postponed hearing the contempt and sanctions motions until after the trial. [Tr.7546-9, 7558-62]

8. The Government Moves to Cancel Agreed Order and Maria Fisher Files are Produced

The Plaintiffs continued with the direct examination of Mitchell over their objections to proceeding at all. [Tr.7498] The Court again promised the Plaintiffs that they could recall Mitchell after they received the withheld documents.***[Tr.7497] Mitchell was then questioned about Maria Fisher, another of his informants and he testified that she had given him information about weapons at 2337 West Monroe Street just prior to the raid.

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* See Appendix B.

** The Plaintiffs had previously moved that Mitchell's testimony about the Rockford trip and the document [D.D., later admitted as FD#2] be stricken, but the Court had denied the motion. [Tr.7099-7103, 7106]

*** He again told the jury not to blame the F.B.I. defendants but to blame him. [Tr.7503-4]

The Plaintiffs then reasserted their requests for production of her files.* The Court ordered their production and the next two and one-half days were spent reviewing the deletions made by the Government. Among the documents in her file, previously not produced by the Defendants, was one dated 12/3/69 which related information from Fisher to Mitchell that the weapons at 2337 W. Monroe were legally purchased.**[PL#61]

During this period, the Plaintiffs were receiving several new volumes of materials per day, while attempting to do a half-day examination of Mitchell. On April 6th, the Plaintiffs attempted to suspend Mitchell's testimony while they went through the documents. This request was denied. [Tr.8010-11] The Court then reiterated that he would allow the Plaintiffs to recall witnesses to examine them on documents which they did not have at the time of the witnesses' examination. [Tr.8009]

On the 7th, the Plaintiffs moved to suspend the trial until the documents were all produced; this was also denied. [Tr.8031] The Plaintiffs then suspended Mitchell subject to recall. [Tr.8032] The Court ordered the Defendants to go ahead with cross-examination, without prejudice to Plaintiff's right to recall him at a later time. [Tr.8047]

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* Plaintiffs had first sought these files in early 1975 [1st Held subpoena] and had sought them again in the 2nd Held trial subpoenas --both requests had been denied by the Court.

** Also among the documents was PL#114 O.P. which established that Piper and Kanter had reviewed her file pretrial in order to determine whether to produce materials from it, as well as two documents [PL 62 and 63] which impeached Mitchell's prior testimony.

There is an obvious mistake by the Court reporter when PL#61 was published, as the transcript reads "Illegal weapons" rather than "legal" and should be amended to conform with the Exhibits. [See Tr.7847-51]

On April 6th, the government moved to rescind the part of the March 24th agreed order which dealt with production of the 92 volumes of the Black Panther Party file,* and to suspend xeroxing before they began to Xerox that file. [Tr. 7973-99] The Court suspended the xeroxing, stated that he had been going over the recently produced files ex parte, that he thought there was "fair compliance" on the government's part, and opined that the Plaintiffs "would not be able to use over 1% of the files they get." [Tr.8000-03] On April 7th, the Plaintiffs filed a motion to reconsider the Court's Order of 2/26 quashing the second Held subpoena, in light of its basis being grounded in government misrepresentations.

9. The Government Reveals 45 New Volumes of Files and the Court Denies the Plaintiffs' Right to Recall Mitchell

On April 8th, three months after the trial began, the Defendants finished turning over the 12-volume Hampton file and the 16-volume O'Neal file. Among the last documents turned over --from Volume 13 of O'Neal's file-- was a document written by Piper claiming F.B.I. credit for the raid, and seeking a bonus for O'Neal for getting the floorplan and setting up the raid. [PL#83] Also contained in the last volumes turned over was a similar admission by Defendant Mitchell, [PL#91, p. 6] as well as another document written by Mitchell which unequivocably established O'Neal as a counterintelligence agent. [PL#WON3] These documents all concerned payment requests for O'Neal** --information specifically and repeatedly sought by the Plaintiffs and with which request the government repeatedly claimed compliance.

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* In reality there were 135 volumes as the file contained many subfiles.

** To say nothing of its "pertinence" to the raid and to each and every subpoena from the first one on Mitchell in late 1973.

On April 13th, the government represented that it had now produced the entire files of all the Plaintiffs and O'Neal. [Tr.8214] The complete turnover comprised some 50 [Tr.8127-31] volumes of documents --approximately 25,000 pages, and 2541 documents-- of which the Plaintiffs had received approximately six percent before Mitchell's inadvertent revelation on March 17th.*

On April 15th, the Defendants finished cross-examination of Mitchell. The Plaintiffs decided to proceed with redirect, rather than to reopen the direct, as they were still attempting to digest and evaluate the 25,000 pages of turnovers (over half of which were written by Mitchell), and to recall Mitchell when they had been able to properly evaluate the materials. The Plaintiffs therefore did not question Mitchell concerning any of the new turnovers, nor did they introduce any of these documents. The necessity of this decision was reinforced when on the 16th, the government, by affidavit of Richard Held, revealed the existence of 45 "new" F.B.I. files, including 17 volumes under the caption of: this case (Iberia Hampton v. Daniel Groth); 2-1/2 volumes concerning the Federal Grand Jury investigation, and documentation concerning a proposed warrantless wiretap on Fred Hampton. The Plaintiffs asked for an immediate hearing on the affidavit, but the Court set the afternoon of April 20th for arguments and hearing. [Tr.8546-7]

On April 19th, the Plaintiffs filed a "further statement" which consisted of a factual supplement to their prior motions generally describing some of the more important evidence which was contained in the recent government turnovers.**

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* The plaintiffs had received 3.3% of the Hampton file; 6.4% of the O'Neal files; and 7% of the other Plaintiffs' files, all of which portions were unequivocally represented by government counsel to be the complete files (see Motion for Sanctions, pp. 8-9) [See Appendix B.]

** There was no Court session on April 19th.

On the 20th, the Plaintiffs ended their redirect examination of Mitchell, and attempted to reserve their promised right to recall him after all documents had been produced and digested. [Tr.8582-84] The Court then said there would be no recall, [Tr.8584] then angrily called the next witness, Defendant Robert Piper, to the stand. The Plaintiffs requested a hearing on the 45 new volumes (which had been set for that day), but the Court denied it.* The Court accused the Plaintiffs of stalling, and filing motions in the newspapers.** (The Further Statement, filed the day before, had received wide coverage in the press.)

10. Piper Testifies: More F.B.I. Documents Are Revealed and Produced

The Plaintiffs then questioned Piper about his duties as supervisor of the Racial Matters Squad and established that he received regular instructions and policy directives concerning the Black Panther Party from Washington, which he then passed on to his agents for implementation. [Tr. 8683-4, 95-8702, 8713-30] The Plaintiffs moved for production of these instructions, and the Court ordered Piper to search for them. [Tr.8683-4, 8735] On the 22nd and 23rd, Piper was questioned about instructions concerning wiretaps, [Tr.9021-92] and concerning authorizations to use concealed recording devices. [Tr.8954-9] The Court ordered Piper to search for these materials. [Tr.8975, 9092]

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* The Plaintiffs contended that Piper might have written many of the documents found in those files. The Court said, "You've had thousands of documents authored by Piper" to which Mr. Haas correctly replied, "We've had four." [Tr.8582-86] All of this transpired before the jury.

** Also, this was said in the presence of the jury. [Tr.8609-12] The Court then held Mr. Taylor in contempt for protesting these comments. Later the Court vacated the contempt judgment.

During the week, the Plaintiffs had attempted to obtain a hearing on their Motion to Vacate the Order of February 26th, for a hearing on their motions for sanctions and contempt, and sought a recess to examine the documents only recently turned over. The Court denied these requests [Tr.8635-6, 8655, 56, 8662-3] saying his confidence in the F.B.I. remained unshaken.* [Tr. 8740-1]

On April 21st, the Court returned the Black Panther Party files to the F.B.I., without sealing them or preserving a copy for appeal. [Tr.8738-42] On April 27th, the government produced a document responsive to the order concerning concealed recording devices,[Tr.9096-9, PL#77] and on April 30th, they produced 19 instructional documents, found in their "control" files.**[Tr.9550-1] On April 28th, the Government informed the Court that 11 clerks were searching the Black Panther Party files for instructions as ordered by the Court on the 20th and 23rd. [Tr.9217-19] The Plaintiffs again objected to proceeding without having all of the documentation. The Court responded by saying that the Plaintiffs had had "wonderful cooperation" from the defendants, and had "received thousands and thousands of pages." [Tr.9220] On May 4th the Government reported on their search and the Plaintiffs moved that they be allowed to determine relevancy, since no privilege had been claimed. [Tr.9673] The Court rejected this, stating that it would review the documents produced by the Government. [Tr.9673-4]

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* Additionally, on April 20th, he had issued an order finding that "only" 29 documents were missing from the turned over files (including five documents within two weeks of the raid [Vol. #6, Sec. 474, 475, 481, 402, and 490]) and ordered the F.B.I. to search for the documents but not to "waste useless man-hours" on it. The government later came up with eight documents which might have been among the missing. [Held Affidavit of 6/2 /76]

** See also affidavit of Oliver Revell, filed April 30 , 1976.

On May 6th,* the goverment turned over two volumes of instructions to the Plaintiffs, [Tr. 9776-80] out of nine volumes which they had selected from the Black Panther file.** Among these documents were instructions from Washington to "destroy what the Black Pathers stood for," [PL#90] to engage informants in thefts of B.P.P. records and documents, [PL#97] to step up activities against the breakfast program, the liberation school, and other B.P.P. programs, [PL#100-103] and to combat the adverse publicity caused by the December 4 raid. [PL#104] Many of these instructions had Piper's and Johnson's initials on them, and some were sent to Mitchell. After half a day of testimony on the 7th, Court was recessed until the 11th for examination of the new documents. [Tr.9842] On the 11th of May, now over four months into the trial, the Court ordered the production of other files, including the rest of the COINTELPRO file and the Breakfast for Children file. [Tr.9870-71] On May 12th, Court was recessed until the 25th.***

During the recess, the government turned over 13 additional volumes of F.B.I. files, which included three volumes of counterintelligence documents, 3 volumes concerning the Federal Grand Jury, 2 volumes concerning the Breakfast for Children Program, and one volume concerning the June 4th F.B.I. raid.****

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* Only three days before, the Court had issued a minute order quashing all requests for Black Panther Party files, finding that he had reviewed those files and that they "largely contain" information on other members of the Black Panther Party or on the Plaintiffs and O'Neal that had already been supplied. [Minute Order of 5/3/76]

** The Court later ordered the production of 14 documents from among the 7 withheld volumes. These were the only deletions which the Court supplied the Plaintiffs after his ex parte purported "review" of some 150 volumes of documents after March 23rd. [Order of 5/21/76]

*** There was supposed to be a week's recess starting the 14th, but it was started early due to the production of these new files. [Tr.10,007-11]

**** Mr. Kanter had previously represented that the Plaintiffs had received "everything" on this raid. [Tr.4184]

Among the documents produced were counterintelligence policy documents which called local offices to destroy the Breakfast for Children Program [PL105-107] and called for the use of local police in harassing Panthers for possession of guns [PL#301] and a request for electronic surveillance of Hampton, dated in February of 1968.* [PL#313] Many of these documents, including these five, were approved by Johnson, and others were approved by Piper or routed to Mitchell.

On May 27th, the Plaintiffs finished the direct examination of Piper, after the Court refused to allow questioning of Piper concerning his role in the withholding --either in front of the jury or in an offer of proof, [Tr. 10462-84] ruling that the turnover of documents mooted the question, and that any questioning would prejudice the other defendants. [Tr.10463-86]

During the cross-examination of Piper, the Defendants introduced certain documents which referred to sections of the F.B.I. manual, as well as certain sections of the F.B.I. manual itself. [FD# 27, 29] The Plaintiffs then sought production of other parts of the manual, especially those which dealt with the control of "racial" informants. This request was denied. [Tr.11298-302, 11356-77] On June 14th, the government turned over two volumes of wiretap files, including justifications and authorizations for the tap. [Tr. 15572-4] Also on the 14th, a newspaper article revealed that informant Maria Fisher had stated that she had been asked by Marlin Johnson to drug Hampton.** The Plaintiffs asked that the Court voir dire Ms. Fisher, as her credibility was at least somewhat suspect to all parties, but the Court refused to do so. [Tr. 11502-8]

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* Plaintiffs had sought these documents since pretrial. See Held Subpoena, and Held second trial subpoena

** She had previously distributed, in the Court building corridors, statements containing this information. [Tr. 11493-7]

On June 15th, the Plaintiffs finished examination of Piper. They again renewed their request for a hearing on the many affidavits and representations made by the government concerning the documents produced. The Court stated that they could have this hearing "later."* [Tr.11563-4]

11. The Court Refuses to Order Production of the B.P.P. and Iberia Hampton Files

On June 30th, 1976, the Court finally denied the Plaintiffs' Motion to reconsider its order of February 26th, which quashed the second Held trial subpoena. The Court also denied the Plaintiffs' request for the 17-1/2-volume Iberia Hampton file, ruling it covered in toto by attorney-client privilege and work product.** This file was not sealed by the Court and was allowed to remain with the F.B.I. Additionally, the Court again refused production of the B.P.P. files, finding that production of the Panther file would be duplicative of the Plaintiffs and O'Neal files already produced.*** He found this without reviewing each document; his finding was reached, rather, by "spotcheck" and "familiarity with the F.B.I. filing procedures."**** He further found that deletions and withholdings by the Federal Defendants of all materials and documents were properly done. [See order of 6/30/76]

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* Plaintiffs were never afforded a hearing either on the sanctions motions or on these affidavits. Compare this with the alacrity with which the Court allowed questioning of William Hampton and Dianne Rappaport of the December 4th Committee (a group which lent support to the Plaintiffs) concerning a film and videotape --both of which were public information and which F.B.I. headquarters in 1970 had ordered informants to obtain. [PL# 324][Tr.11548-65] 334

** He even ruled that one document from the Maria Fisher file which was turned over to the Plaintiffs [PL#114 O.P.] was covered by this "privilege" and should not have been turned over!

*** This order in fact rescinded the 3/24/76 agreed order, whereby the government was to turn over all documents in the B.P.P. file upon which they did not claim privilege.

**** The sum total of this "spotcheck" may have been an hour he spent with Larry Deaton and the B.P.P. files at the F.B.I. offices in early May. [Tr. 9756]

12. The Statistics of Withholding and Obstruction

In total, the Plaintiffs identified 213 F.B.I. documents for admission in evidence. Of these, 207 were offered and 186 were admitted. Of the 213 total, they had only 33 before trial,* and of those admitted, they had 27 before trial. 47 of these 207 documents were received by the Plaintiffs, while Johnson was the stand; 39 more were among the withheld O'Neal and Plaintiffs files which were not obtained until mid-April,** and were not used with Mitchell or Johnson. Mitchell authored the vast majority of these 39 documents. An additional 64 of these 207 documents were received in May and June of 1976, and likewise not used with Johnson or Mitchell. These 64 documents were comprised of 36 instructions, 9 Federal Grand Jury documents, and 19 counterintelligence documents; many had Johnson's initials on them, and almost all dealt with policy.*** Several others were routed directly to Mitchell.**** Another 25 of the 207 documents admitted concerned O'Neal's custody and payments and were obtained on December 14th, 1976.***** The Federal Defendants had withheld over 95% of the documents ordered produced in January

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* Nine of these were offered only after the deletions had been restored in March, and five others came from the Senate Select Committee and were denied admission.

** Four additional documents were received on 3/30-4/2 from the Maria Fisher file and were used with Mitchell.

*** 24 of these documents had Johnson's initials on them, and six others were directed to him personally.

**** Twelve documents.

***** These documents were finally produced after Plaintiffs re-subpoenaed the material late November and were informed that they should seek the materials from the Marshall's Service.

and 85% of the documents admitted at trial* were not in the possession of the Plaintiffs until after the jury was selected. Despite this, the Court in March 1977 again refused the Plaintiffs' request to recall Mitchell and Johnson. [Tr.28641]

13. The Court Exonerates the Federal Defendants and Bills the Plaintiffs for the Defendants' Withholding

On April 7th, 1977, at the conclusion of the case on liability, Plaintiffs filed a motion for direct verdict against the federal defendants and alternatively again sought sanctions barring defense, and a hearing. On April 15, 1977, the Court denied this Motion, as well as the previous sanction and contempt motions, and instead exonerated the federal defendants and their attorneys. He found that his order of January 27, 1976 was only for "relevant" documents, and recited a version of Mitchell's testimony which is wholly unsupported by the record. He found that only after the March 17th and 23rd relevations of Mitchell did he order the complete files to be produced, and that the only document about which there was "a controversy" concerning non-production was the "Rockford" document! ** [PL#D.D.] At the conclusion of the trial, the Plaintiffs were assessed over $26,000 in costs for the government's time in reproducing these documents.

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* 61% was not received until three months into the trial, and 43% was not received until 4-5 months into the trial.

** Even a cursory comparison of the 1/27/76 order, as well as the testimony of Mitchell and the statements of the Court will expose this shocking judicial re-writing of the record.

II. GROTH'S PURPORTED INFORMANT: THE TRIAL COURT'S REFUSAL TO ALLOW DISCOVERY AND ADMISSION OF EVIDENCE CONCERNING THE EXISTENCE, IDENTITY OR RELIABILITY OF DEFENDANT GROTH'S INFORMANT WAS HIGHLY PREJUDICIAL, IT SUBSTANTIALLY HINDERED PLAINTIFFS' PROOF, AND MUST BE CORRECTED UPON RETRIAL.

The Plaintiffs have alleged in their Complaint* that the raid on their apartment was accomplished under color of a search warrant obtained illegally [PL Comp., para. 40], in violation of their Fourth Amendment rights. [PL Comp., para. 86, 79, 80] Further, they alleged that some or all of the Defendants conspired to obtain this warrant and to use it as a pretext to illegally raid the Plaintiffs and to violate their civil rights. [PL Comp., Counts I, III]

During pretrial discovery, Plaintiffs sought to discover evidence in support of their factual allegations. Viewed in light of deposition and FGJ testimony, the complaint for search warrant on its face exposed material misrepresentations by Defendant GROTH. The warrant claimed that Defendant JALOVEC** had received information from an informant that three illegal sawed-off shotguns were located at the apartment. JALOVEC's and MITCHELL's depositions revealed that this information was obtained by JALOVEC from MITCHELL, who in turn had received it from Defendant O'NEAL, the actual informant. [See Part ONE, sect. II] GROTH later admitted that he knew this information came from MITCHELL's informant--and this information was thus triple hearsay, as well as a material misrepresentation in GROTH's sworn affidavit for the warrant. Additionally, JALOVEC admitted before the FGJ [Part ONE, sect. II] that MITCHELL had "most likely" told him there were three "Ithaca riot shotguns," which would not have been illegal, and that JALOVEC "mistakenly thought" MITCHELL

*Plaintiffs' First Amended and Consolidated Complaint, filed 12/3/74.

**JALOVEC testified both at deposition and at trial that he drafted the search warrant for GROTH to sign and arranged for its presentation before Judge Robert Collins, who had formerly been his superior at the U.S. Attorney's Office.

meant sawed-off shotguns--which was what they wrote in the affidavit.* Meanwhile, MITCHELL wrote a memorandum [PL #21] saying he had informed JALOVEC about "numerous weapons" at 2337 W. Monroe--but he nowhere wrote down anything about sawed-off shotguns, or other illegal weapons.**

GROTH's affidavit said further that he himself had an informant of his own, who had given him information of illegal weapons at 2337 W. Monroe, which GROTH swore this reliable individual told him he had seen in the apartment on December 1, 1969. GROTH further recited that this informant had given information which led to "confiscation of weapons in two raids," as well as to "several convictions."***

At the deposition of GROTH, Plaintiffs sought to inquire about this alleged informant, in order to further establish the illegal nature of the warrant. This illegality could be found in several ways: (1) if the informant was not reliable, as averred in the warrant; (2) if the informant did not give any or all of the information GROTH swore to in the complaint; or (3) if the informant did not exist. Additionally, evidence could be obtained that the informant, if he did exist, was an active participant in the conspiracy and the planning of the raid, or a witness or participant in the raid itself. Such evidence could have made him either a material witness, or led to his joinder as a defendant, as with Defendant WILLIAM O'NEAL. Conversely, if the informant did

*JALOVEC further stated that MITCHELL had told him of a stolen police shotgun, but that he had "forgotten" to include it in the warrant.

**Eight days after the raid, MITCHELL made his first written mention of illegal weapons, stating by memo that he told the SAO that there was one sawed-off shotgun at 2337 prior to the raid. [PL #23]

***This qualified him under the simple formula then in force in Cook County application of search and seizure law, as "reliable," and if the officer swore to the formula, there was no going behind the four corners of the warrant.

After GROTH's repeated refusals to testify, the Plaintiffs moved to compel answers to the questions, and for sanctions. The issue was extensively briefed and argued, and the Plaintiffs repeatedly stressed the significance of this discovery to the issues of the Complaint, and the Court expressed its grave concern over the question. He ordered GROTH to appear for an in camera interrogation. At first the Court indicated that counsel would be present [2/28/75, p. 170], but changed his position at the insistence of Defense counsel, and announced an in camera, off-the-record examination by the Court [pp. 181-2] where only the name of the informant would be asked. The Plaintiffs strenuously objected, but suggested that if the Court held a private interview he should at least propound to GROTH the questions not answered by him at deposition, as well as appropriate questions to determine the particulars of any alleged present danger to the informant, and any illegal activities which the informant might have taken part in. [2/28/75, pp. 179-80, 182-4] Plaintiffs further proposed that these proceedings be transcribed and sealed for review by this Court [p. 180], and that the Court also make findings of fact and conclusions of law.

The Court held a brief, private, off-the-record conference with GROTH. Upon returning to the courtroom, he informed all parties that GROTH had said he would refuse to divulge the name of the informant to him, even if there would be "consequences" for GROTH. [2/28/75, pp. 219-20] This was the sole question put by the Court. [p. 234] The Court then questioned GROTH on the record as to the conference, and GROTH again stated that he would not reveal the name of the informant "even if ordered to do so." [2/28/75, p. 221] Plaintiffs' counsel then interrogated GROTH, and he reiterated that he would not answer any of the questions which were the subject of the pending motion to compel.

not exist, or stated that he did not give GROTH the information which GROTH swore he gave, Plaintiffs would have powerful evidence in support of the Federal-State conspiracy and in all probability a directed finding concerning the issues on the legality of the warrant.

GROTH, at his deposition some five years after the operative events, ostensibly on the advice of counsel,* refused to answer numerous questions which would have led to evidence crucial to Plaintiffs' proof concerning the warrant--stating only that it would "endanger the lives of other persons." These included questions concerning the identity, reliability and motivation of his purported informant, as well as whether he (or she) had been present at 2337 W. Monroe Street on December 3 or 4, 1969.** He did, however, answer some of the questions concerning the information the informant had supplied--and the answers made this alleged informant appear to be an active participant in the planning of the raid. The informant, according to GROTH, asked him when he was going to "move on the crib" [2337 W. Monroe]. GROTH replied, "when I'm convinced there are weapons there." The informant then allegedly told GROTH about weapons at the apartment, including illegal weapons; and further told him times HAMPTON and others were likely to be at the apartment. The informant stated that 8:00 p.m. would be a good time to raid the apartment, and then, said GROTH, explained to him on the phone the layout of the interior of the apartment, from which description GROTH made a sketch/floorplan which he says he used in the raid itself. The informant also purportedly told GROTH other details concerning the raid itself.***

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*"Special State's Attorney" John Coghlan, who stated that he was the State's Attorney for purposes of this case, and therefore could and did invoke the privilege on behalf of the County of Cook.

**GROTH refused to answer questions concerning the informant's presence in the apartment two hours before the raid, although in his FGJ testimony, he had implied that the informant was present then. [dep. 176-7] F.G.J. 152.

***See motion to compel Daniel Groth, filed 12/4/74 and Part One, II, supra.

[pp. 226-40]* Plaintiffs then renewed their motion to compel; and the Court denied the motion, refusing to certify the question or to issue a written order, stating only that he "believed" GROTH--that the informant's life was indeed in danger. [pp. 248-50]

At the beginning of the trial, Defendants moved in limine to prevent the Plaintiffs from mentioning or arguing that DANIEL GROTH had refused to identify his informant. [Filed 1/22/76] Plaintiffs opposed this motion and moved for appropriate sanctions against GROTH, including summary judgment on the issue of the search warrant, a finding that the warrant was presumptively illegal, and contempt. Alternatively, the Plaintiffs asked the Court to establish a procedure whereby GROTH's informant could be identified and questioned, in order to assure his existence and reliability; and further sought documentation of the previous raids and warrants which were claimed in the affidavit by GROTH to establish the informant's reliability. [Filed 1/26/76] The Court granted the Defendants' motion in limine for opening argument only, stating that the motion for sanctions was not ripe, as GROTH might well reveal the identity of the informant at trial. He further ordered that Plaintiffs would be permitted to ask GROTH for the identity in front of the jury, and if he refused to answer, to "comment on his refusal, state that they do not believe him, and argue its implications [that the informant] did not exist." [Tr. 2620-4] The Court reaffirmed the principle of requiring a good faith determination of the informant issue during the trial in March 1976, when he set up procedures to determine whether the names of ROY MITCHELL's "seven to nine" BPP informants would be revealed . [Tr. 6348-56 I.C.]

While the Plaintiffs had thus been roadblocked in pursuing evidence

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* The Court again examined Groth, asking him why he declined to answer. After Groth answered, "because it would endanger the lives of other persons", the Court suggested to Groth that it was based upon his experience, as a police officer and "in this case". [p. 241].

** This procedure was not implemented as the Plaintiffs never sought the identities of these informants.

concerning GROTH's informant, certain evidence was discovered in the suppressed FBI files to support Plaintiffs' theory that this informant in reality did not exist. Both ROY MITCHELL and ROBERT PIPER, in memos to Washington, cited their informant O'NEAL as the only source (informer) for the raid. [PL 91, 83] EDWARD HANRAHAN, in a 1975 radio interview, also said the FBI provided the basis for the raid. [Tr. 28063] Deposition testimony of MITCHELL showed that JALOVEC had asked MITCHELL, just after the raid, if he "cared" if it was revealed that he was the source. [PL. #422, (Dep. 464 o.p.)].

Additionally, a careful comparison of both the times and substance of the conversations between JALOVEC and MITCHELL so closely parallel those GROTH said he had with his unidentified informant, as to raise a clear inference that the MITCHELL/JALOVEC connection was, in reality, GROTH's source, and that he concocted the person to cure the hearsay problem the planners had with the warrant. These similarities include:

* The calls on December 2, at approximately 10:30 p.m. (from MITCHELL to JALOVEC and from the alleged informant to GROTH);*

* The provision of the layout of the apartment, which MITCHELL said he gave GROTH, in person on December 2;**

* The fact that GROTH said he was contacted for the first time by his informant about 2337 W. Monroe on approximately November 20, 1969--the same day MITCHELL (who said he spoke with someone he "couldn't identify") first contacted the SAO about weapons at 2337;

* Detailed information concerning who "frequented"*** the apartment

*GROTH originally stated that the call was at 10:30 p.m.; he later changed it to evening, and at trial he changed it to late afternoon.

**GROTH denied that he ever met with MITCHELL or was informed of the layout.

***Both "informants" even used the same term: "frequented."

(including HAMPTON), about DEBORAH JOHNSON (HAMPTON's "girlfriend"), about the 8:00 time of political education classes, and about HAMPTON's .45 automatic. This information was almost completely the same, point for point, as that provided to JALOVEC and GROTH by MITCHELL. GROTH's destruction just after the raid of all memos which he had written about the information he got, including the floorplan, throws further light on the question about the actual existence of his "reliable informant."

Given this additional evidence, Plaintiffs sought to further establish the non-existence of GROTH's informant with two key raid conspirators: GROTH himself, and JALOVEC. While JALOVEC was on the stand, the Court (in sustaining a specious objection by Defendants to the question of whether GROTH's informant was a police officer) reversed his earlier ruling and, without a hearing, ruled the identity of the informant was no longer relevant since "the weapons described [in the warrant] were found there" [in the apartment] and thus "reliability is no longer an issue..."* [Tr. 24558-63] The Court did permit JALOVEC to be questioned concerning the existence of GROTH's informant. [Tr. 24565]

The next witness called was the Defendant GROTH, and Plaintiffs sought to challenge the existence of his purported informant. The witness first indicated that he would take the privilege by refusing to answer whether his purported informant had told him that Bobby Rush, Deputy Minister of Defense, "frequented" the apartment just prior to the raid. GROTH had answered this question at deposition, but the Court sustained the objection based on relevance. [Tr.25085-93]**Defense counsel began to object in the name of the State's

* This "rationale", supplied by the Defendants flies in the face of the 4th Amendment, which of course protects a citizen from an illegal search and further provides that a search which is illegal in its inception cannot be made legal by what is found during the search. Mapp v. Ohio, 367 U.S. 643 [1961]

** Who was present at 2337 W. Monroe Street prior to the raid was highly relevant, and had been gone into in depth by all parties with almost all witnesses with any knowledge--from Defendant MITCHELL to O'NEAL to Plaintiffs SATCHEL and JOHNSON. Rush, later took the stand himself and was questioned about this.

Attorney and Corporation Counsel, and to direct the witness not to answer questions concerning the existence of the informant.* Objection after objection to other questions which went clearly to the question of the informant's existence were likewise sustained,** as the Judge angrily chastised Plaintiffs' counsel for asking questions which he characterized as seeking the identity.*** He then joined with the defense in protecting GROTH and erroneously informed the jury that the law did not allow for GROTH to reveal his informant's identity. [Tr. 25299-330, 25323]**** When counsel framed a series of questions designed to show the suspicious similarities between the information supplied by the FBI to JALOVEC with that from GROTH's purported informant, the Court struck the questions and the answers. [Tr. 25311-5] Finally, counsel confronted the witness, asking: "You don't have an informant, do you?" When GROTH stated that to be a "total untruth," counsel sought to force GROTH to decline to answer who his informant was in front of the jury. In response to this question, however, the Court became enraged and terminated counsel's examination. [Tr. 25325-9] After this climactic session, Plaintiffs again sought sanctions and default against GROTH, and were summarily denied. [Tr. 25371]

*These same lawyers had previously moved in limine that they not be referred to as Special State's Attorney and Corporation Counsel in front of the jury! [Defendants' Motion in Limine, filed 1/22/76]

**The Trial Court was all too aware of the very real possibility that the informant did not exist, because in another civil rights case he had ordered the informant produced, and after the "informant" was brought in by the City, he told the Judge, in camera, that he did not supply the information which formed the basis for the warrant. The Court did nothing about this information for several months, until the "informant" gave a statement to plaintiff's counsel confirming what he had told Perry. Perry then recused himself from the case. See Millete v. Stanfield, 75 C 1353.

***For example :Tr 25162, 300-302, 25323, 25307.

****The Court told the jury that to bring the informant in to testify would endanger his life or the life of his family if he were dead, even though he had never heard one iota of evidence concerning the nature of the supposed danger or even whether the informant existed, let alone that it might be someone now deceased.

During arguments concerning his purported informant while GROTH was on the stand, the Court grasped at various straws in attempting to justify his baseless and punitive ruling. Upon the prompting of the Defense, he suggested that the proper method of adjudicating the matter would have been by a motion to suppress evidence. [Tr. 25228-9] Although at a loss to understand how such an action would lie in this trial, the Plaintiffs then made such a motion orally; nevertheless only to be greeted with obvious derision by the Court. [Tr. 25374-6]* Judge Perry said he believed GROTH's bald assertion that revelation was dangerous, and made veiled references to proceedings in camera, when in fact no proceedings or inquiry about danger to GROTH's informant had ever been held.** Additionally, the Court said he "relied" upon a Missouri Appellate Court decision which was cited by the Defendants. [Tr. 25354-5]

Plaintiffs in April 1977 sought to introduce, as an admission, the deposition testimony of GROTH wherein he refused to identity his informant or to state whether he was dead or alive. [Tr. 30822-5] This was refused. [Orders of 4/4 and 4/5/77] At the close of Plaintiffs' evidence on liability, the Plaintiffs moved for a directed verdict and other sanctions against GROTH. This was denied by a Minute Order which cited the Missouri case as its sole authority, the first written order about GROTH's informant in the entire history of the case.

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*The Plaintiffs had previously moved to suppress evidence seized by the FBI in their June raid, and the Court had denied the request, stating this "wasn't a criminal trial." [Tr. 5771]

**This professed concern with safety, totally unsupported by any factual inquiry, was entirely selective, as the Court showed little concern that several informants' names could, according to the Defendants, be learned from documents turned over to Plaintiffs. [Tr. 7426-7] He also allowed Defendant O'NEAL to (falsely) testify that Nathaniel Junior, formerly a government witness in the Robinson trial (and a potential Plaintiffs' witness) was an FBI informant. [Tr. 23328]

The Court continued its erroneous, vindictive and highly prejudicial conduct concerning GROTH's alleged informant during instructions and closing arguments. He refused instructions from Plaintiffs which would have allowed the jury to determine whether GROTH's informant existed, and to use that information in resolving the planning, conspiracy and Fourth Amendment claims. Instead, he gave instructions proposed by the Defendants which, in essence, stated both that the warrant was valid and that the warrant's validity justified their actions during the raid. Additionally, he barred Plaintiffs from arguing to the jury that the evidence they had developed about GROTH's informant raised the possibility that he did not exist. [Tr. 36406-7]

The Court's arbitrary refusal to allow discovery concerning GROTH's alleged informant and his obstruction of meaningful cross-examination of GROTH at trial on this issue, undermined an important element of Plaintiffs' proof both on the issue of conspiracy between the Federal and State Defendants and on the direct liability of GROTH and certain other Defendants for obtaining an illegal search warrant and executing an illegal raid based upon it. The Court ignored the law which clearly states that an informant's "privilege" is qualified and must be scrutinized by a balancing test, which weighs the importance of the disclosure against the public's interest in maintaining the privilege intact. Rovario v. U.S., 353, U.S.62[1957]. Such a qualified privilege has been upheld in civil cases as well; but in cases such as this where the party seeking disclosure is doing so in the public interest, under the Civil Rights Act, the Court must employ even more caution before sustaining such a claim of privilege. Westinghouse Electric Corp. v. City of Burlington, 351 F.2d 762 (D.C. Cir. 1965); Gil v. Manuel, 488 F.2d 799 (9th Cir. 1973); Wood v. Brier, 54 F.R.D.7 (E.D. Wisc. 1972). Several Courts have recently recognized the importance of such public interest litigation and have ordered disclosure of the identities of informants when it was alleged that those informants had been in-

volved in surveillance which deprived the plaintiffs of their constitutional rights. Alliance v. Rochford, #74-C-3268 [N.D.Ill. Order of 3/5/76]; S.W.P. v. Attorney General, #73-3160 [E.D.N.Y. oral order of 5/31/77]* The defendants here, unlike a police officer in a criminal case, are charged with illegal acts, and they have abused the privilege in order to avoid liability, prevent the truth from being uncovered, and to hide evidence of their official misconduct. The privilege cannot be used for such a purpose. Gill v. Manuel (supra), Rosee v. Board of Trade, 36 F.R.D. 684 (N.D.Ill 1964). Kinoy v. Mitchell, 67 F.R.D. [S.D.N.Y. 1975]; Kaiser Aluminum and Chemical Corp. v. U.S., 157 F. Supp.939 [1958].

The evidence that has been adduced during discovery and trial, has shown that the existence of this particular informant is highly questionable. Several Defendants have made admissions which certainly make out a prima facie case that there was no such informant, and which establishes their knowledge that GROTH had falsely sworn to obtain the warrant.** The strongest and most convincing evidence, however, lies solely within the control of the Defendants --as the identity of the purported informant, and his testimony on the

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* In Alliance, Judge Kirkland ordered the police Defendants to reveal the identities of 180 police informants who had been involved in surveillance against the class of political organizations, and people who were Plaintiffs in the suit. The Defendants claimed that all records of these informants had been destroyed in a fire, and the Court entered sanctions which admitted prima facie the Plaintiffs' allegations concerning the informants' activities. [mem. order 11/10/74]. He later ordered the F.B.I. Defendants in a consolidated case, A.C.L.U. v. City of Chicago, to produce the identities of over 200 informants who surveilled the class plaintiffs in that case (order of 6/7/77). In S.W.P. v. Attorney General, Judge Griesa ordered the production of the complete files of 16 key informants in the S.W.P. --including their identities.

** This is supported by the material misrepresentation on the face of the warrant, where GROTH knowingly implies that the source of JALOVEC's information was a "first hand" informant when in fact, it was MITCHELL, who had not been inside the apartment; by O'NEAL's conflicting testimony concerning whether he even supplied the information to MITCHELL, which MITCHELL in turn passed on to JALOVEC, and which ended up in the warrant attributed to JALOVEC's "informant"; by JALOVEC's and GROTH's admissions that the warrant would be illegal if based solely on O'NEAL's information to MITCHELL; [Tr.24534-40, 25278] and by GROTH's alleged destruction of his purported informants' file.

issue of whether he supplied the information to GROTH, could quite conceivably seal the Plaintiffs' case against the Defendants. GROTH's use of the privilege to protect himself from both liability and confrontation cannot be tolerated where such a record of illegality exists, as the public interest can only be served by disclosure rather than by secrecy. Gill (supra); Brennan v. Automatic Toll Systems Inc., 60 F.R.D. 195 (S.D.N.Y. 1973); see also Timken Roller Bearing Co. v. U.S., 38 F.R.D. 57 (1964).

The evidence adduced so far, when read together with the Plaintiffs' allegations, shows conclusively that the identity, existence and reliability* of GROTH's purported informant is crucial to their claims. Even if the self-serving, selective testimony of GROTH that the informant does exist is accepted, that testimony itself establishes the informant as a participant in the illegalities alleged and proven by the Plaintiffs. According to GROTH, this informant communicated a floor plan, suggested a raid time, and encouraged the raid. He also may have been in the apartment as late as 2:00 a.m. on the morning of December 4th --a crucial bit of evidence, especially when one considers the evidence that Hampton was drugged by someone, before he went to sleep on the early morning of December 4th. GROTH's own testimony establishes his alleged informant to be a participant in and witness to critical operative events in issue, as well as establishing him a potential defendant or co-conspirator. This gives a strong independent basis for revelation of this in-

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* The court below would not even order the production of prior warrants and affidavits based on the informant's information, despite the material discrepancies, even in light of this Court's holding in U.S. v. Carmichael, 489 F.2d 983 (7th Cir. 1973) en banc; and U.S. v. Pearce, 275 F.2d 318 (7th Cir. 1963) that one could go behind the warrant to test the informant's credibility (and existence) where there was either an intentional misrepresentation of a fact or any misrepresentation of a material fact on the face of the warrant -- even if the informant's only participation was to provide probable cause for the warrant. See also Millette v. Stanfield, 73-C-1553, Order of 9/25/74 where Judge Perry in a civil rights case ordered production of 5 previous and 5 subsequent warrants purportedly based on information supplied to the Defendant police officer by the informant in question.

formant's identity, as it places this informant squarely within the exception to the privilege as carved out by the Supreme Court* in Rosario (supra) at 60-61; see also U.S. ex rel. Thomas v. Brierton, 408 F.Supp. 14 (N.D.Ill. 1976); U.S. v. Conforti, 200 F.2d 365 (7th Cir. 1952); Wirtz v. Rosenthal, 388 F.2d 290 (9th Cir. 1967).

The Trial Court, rather than recognize the importance of the Plaintiffs' claims concerning GROTH's alleged informant, instead intervened to protect the Defendants from all challenge on the issue. He allowed the Defendants to obstruct the discovery process, and to abuse the privilege. He held a sham "hearing" where all he determined was that GROTH would disobey an order compelling disclosure if the Court were to issue one. He never held any hearing, in camera or otherwise, to determine the validity of the claim of privilege, or to determine the alleged danger to the informant; instead he blindly accepted Defendant GROTH's bald assertion of danger. He never made any determination as to the reliability or even the existence of this informant, despite the obvious implications of the evidence --neither at pre-trial nor, as it was strengthened by the production of the suppressed documents and other admissions, at trial. He not only blocked discovery of this evidence, but also wrongfully undercut the independent evidence that existed concerning the fraudulent warrant and protected GROTH from challenge even after stating that Plaintiffs could confront him on the subject of his informant's existence. Additionally, the Court gave instructions to the jury which in essence declared the warrant to be legal. Such repeated actions by the Court leads to the inescapable conclusion that he knew both that this evidence was crucial to Plaintiffs' case and that the Defendants' case was in fact put in extreme jeop-

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* GROTH testified that the purported informant gave information in order to advance himself in other areas. Such an inducement, like financial remuneration also removes this informant from the protection of the informant's privilege. See: Westinghouse (supra); People v. Bell, 61 Ill.App.2d 224 (4th Dist. 1965).

ardy by any legitimate inquiry into the facts and circumstances of the warrant and its procurement. He repeatedly acted to protect the Defendants' interests --in blatant disregard for the law and the Constitution. Such actions severely prejudiced the Plaintiffs in the presentation of their case, and, even standing alone, would support reversal. [See Part Four IV, Part V]

As importantly, however, this Court should set guidelines upon retrial in order that the Plaintiffs be allowed full discovery and disclosure concerning GROTH's alleged informant. The record as it presently stands justifies the issuance of an order on the Defendants to produce GROTH's alleged informant, with appropriate safeguards, for questioning by Plaintiffs' counsel, and to produce all relevant documentation --such as previous warrants and payment vouchers-- which have not already been destroyed by the Defendants. See Jabarra v. Kelly, 62 F.R.D. 424 (1974); Kinoy v. Mitchell (supra)* If the Defendants refuse to comply with this order, sanctions should be ordered --such as finding liability on such issues as the illegality of the warrant and the raid against GROTH, JALOVEC, HANRAHAN, MITCHELL and PIPER, or barring the Defendants' use of good faith as a defense to the Plaintiffs' claim of illegal planning and execution of the raid. See Alliance v. Rochford (supra); Payne Weber v. Inmobiliana Media, 543 F.2d 3 (2nd Cir. 1976); Kahn v. Secretary of H.E.W., 53 F.R.D. 241 (D.Mass. 1971). [See also Part Four , Section IV, infra] Such an order must be entered in order to insure that the Plaintiffs are afforded a fair trial on remand.

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* While the actions of Defendants, in obstructing discovery and the trial by the blatant abuse of the privilege, the destruction of informant records, and Defendants' arrogant indication to the Court that they would disobey any order to produce as well, certainly supports imposition of these sanctions at this point, Plaintiffs prefer to proceed with a hearing in order to develop their evidence, as it is such an important aspect of their case.

III.SCHEDULE OF EVIDENCE WRONGFULLY EXCLUDED

A. EVIDENCE IN THE CASE IN CHIEF

1) Evidence which disproved GROTH's assertion that he had an independent informant;

2) The F.B.I. Counterintelligence policy of using local police to harass and falsely arrest members of Black organizations; [PL#2] [PART ONE, P. 1,2]

3) Parts of F.B.I. documents which stated that non-violent Black leaders such as Martin Luther King and Elijah Muhammad were targets of the Counterintelligence program as were the organizations (Nation of Islam and Southern Christian Leadership Conference) which they led; [PL#2] [PART ONE, P. 1,2]

4) The Recall of Defendants JOHNSON and MITCHELL to be examined about the documents withheld when they first testified, and about the Jerris Leonard/Hanrahan Deal;

5) Documents that showed that the Counterintelligence Program in San Diego took credit for encouraging the murder of four B.P.P. members and for the violence in the ghetto of San Diego; [PL#120-122] [PART ONE, P. 5,6]

6) Documents that showed that the Defendants had received and filed letters between Hampton and his attorneys, relatives, and friends, that had been intercepted while he was in jail; [PART ONE, P. 19]

7) A document which exposed a deal between Edward Hanrahan and Jerris Leonard to continue the F.B.I. coverup and avoid indictments for Hanrahan and his raiders; [PL#24] [PART ONE, P. 79]

8) Evidence that Defendant O'NEAL did not pay income taxes on the $12,000 he received as income from the F.B.I. during 1969 and 1970; [Tr.24322]

9) Evidence of ROBERT PIPER's participation in the suppression of Evidence of his and other Defendants' liability; [See: PART FOUR I,B

10) Evidence that O'NEAL urged B.P.P. members to blow up an armory; [PART ONE, P. 13]

11) MARLIN JOHNSON's Grand Jury Testimony --which showed his suppression of the F.B.I.'s role in the December 4th Raid from the Grand Jury; [PART ONE, P.71]

12) ROY MITCHELL's Special State Grand Jury Testimony where he did not mention his passing of the floorplan or sawed-off shotgun information although directly asked; [PART ONE, P. 74]

13) Questioning of MARLIN JOHNSON concerning the secret deal between Hanrahan and Leonard --to which JOHNSON was made privy;

14) Evidence of the Involvement of the Attorneys for the Federal Defendants in the suppression of documents from the Plaintiffs;

15) Admissions by Defendant GROTH that the F.B.I. got local police "to do its dirty work,"and by Defendant HANRAHAN that he would have done things differently (concerning the raid) if he had known about the F.B.I.'s counterintelligence program; [PART ONE, P. 34]

16) An Admission by HANRAHAN that he knew that GROTH had a floorplan of the interior of 2337 West Monroe at least by December 4th; [PART ONE, P. 52]

17) Statement by GROTH that HANRAHAN had approved of the raid at a meeting on December 3rd, 1969; [PART ONE, P. 30]

18) A color film of the apartment taken by Michael Gray within a few hours of the police leaving 2337 West Monroe Street on December 4th, which graphically portrayed both the destruction and the extremely small size of the apartment; [PART ONE, P. 51]

19) An admission by the Defendant ERVANIAN, who headed the I.I.D., that the I.I.D. investigation was a whitewash and the worst investigation he had ever seen; [PART ONE, P. 64]

20) Evidence from JALOVEC and HANRAHAN that directly established that the S.P.U. was a unique police Unit directly and exclusively under their command; [PART ONE, P. 15, 16]

21) An admission by HANRAHAN that he doubted the raiders' story after he saw Zimmers' test results; [PART ONE, P. 77, 78]

22) Testimony by Zimmers that after he tested the ballistics items collected by the Andrews evidence team, there was still only evidence of one shot being fired by the occupants; [PART I, p. 48]

23) Evidence of former misconduct complaints (I.I.D.) against the raiding Defendants, which HANRAHAN and JALOVEC admitted they had reviewed in hiring them. Several had numerous complaints --including JAMES DAVIS who had 67 complaints and had a judgment against him for brutality. HANRAHAN said the presence of DAVIS on the raid was why he knew Hampton was not murdered.[PART ONE, P.16]

24) Evidence that Plaintiff Truelock was told on December 4th that Bobby Rush "was next" and that that evening Rush's apartment was raided by the Chicago police;

25) Testimony of Robert Zimmers that if Jones' gun was placed with butt against the middle door and fired, it was capable of making a mark like the one found in the entrance foyer; [PART ONE, P. 39]

26) An interview of Defendants CARMODY and CIZSEWSKI on T.V. on the early morning of December 4th, in which they falsely accuse Hampton of being in the gun battle and in which they deny that they knew it was a B.P.P. apartment; [PART I, p. 51]

27) Scale replicas of men built by Thomas Peyton as part of the F.B.I. scale model of the apartment --which would have demonstrated the extreme unlikelihood of shots by Brenda Harris going out the front 3 doors without hitting one of the Defendants standing in the doorway; [PART I, p. 38]

28) Evidence which showed that Hampton and the B.P.P. had worked with the Afro-American Patrolman's League and Senator Newhouse to investigate police brutality and police killings of blacks on the West Side of Chicago (of which there had been eleven in 1969) --including the Soto Brothers; [PART ONE, P. 18]

29) Evidence that showed that HANRAHAN in June of 1969 had held a press conference and announced a "war on gangs" as part of his new S.P.U.'s main goals; [PART I, p. 15]

30) Evidence (a Justice Department Memo) which showed that the police had cheered and stated "that's when to get them --when they're asleep in their beds" when the Defendants announced the raid on police radio (this was admitted, then struck); [PL#450] [PART 1, p. 48]

Much of this evidence was kept out for no articulated reason, other than the obvious one that it was damaging to the Defendants. The relevance of the evidence was obvious to all parties as well as the Judge. Oftentimes, he would reject the strongest evidence on a point while allowing less powerful evidence on the same subject (i.e., [PL#24] "war on gangs"). Other times it would be kept out first because "it wasn't impeaching" and when later offered as a prior admission of a party, would be denied because the "witness had testified."* This rule on prior admissions and statements was one of the most arbitrary and erroneous. At first the Court ruled that the witness had to be called, and that their prior statements could not be admitted in lieu of their testimony or to supplement it. He later changed this rule and admitted certain admissions of parties excepting those who had testified. This ruling violated not only Rule 801 F.R.E. and 32(b) F.R.C.P., but was in direct contravention of this Court's holding in reversing Perry for an identical mistake: Fay v. Walston, 493 F.2d 1036 (7th Cir. 1974); Community Counseling Service v. Reilly, 317 F.2d 239 (4th Cir. 1963). Additionally, he refused to admit damning admissions by Defendants of their conduct and that of their co-conspirators, on the specious grounds that they were opinions and conclusions (i.e. ERVANIAN saying the I.I.D. investigation was the worst he'd ever seen**), while he admitted, and indeed solicited, self-serving opinions from the Defendants who testified. Perry also

* The prior testimony of JOHNSON and MITCHELL --strong and substantive evidence of concealment and coverup-- was kept out on these grounds, even though it would be "impeachment by omission" as well as direct evidence of coverup. See: People v. Henry, 47 Ill.2d 312, 265 N.E.2d 876 (1970); United States v. Collins, 478 F.2d 837 (5th Cir. 1973); McDonnell v. United States, 472 F.2d 1153 (8th Cir. 1973); United States v. Insana, 423 F.2d 1165 (2nd Cir. 1970).

** See: In re Komfo Products Corp., 247 F.Supp. 229 (1965).

devised a method to keep many of the prior statements that he did admit from the jury --as he admitted them at the end of the Plaintiffs' case on liability-- but ruled that they could not be read to the jury until the Defendants took the stand in their Defense.* [See order 4/4, 4/5/77] He then directed verdicts as to most of the Defendants and therefore the jury never heard 95% of this evidence.

B. REBUTTAL EVIDENCE

The Court, in essence, scuttled the entire Plaintiffs' rebuttal case, except for the testimony of Elenor Berman. He refused to allow Larry Kennon to testify about DAVIS' statement to him on 12/4 that DAVIS went to the rear of the apartment and saw Fred Hampton, in order to rebut DAVIS' contention that he had not gone to the back of the apartment during the raid, and had not seen Hampton's body. [PART I; 44, 45] The Court refused to allow the Plaintiffs to call some of the raiders who had not entered the apartment for the limited purpose of rebutting the Defendants' contention that the Panthers had fired shots at them and they must have gone outside, as well as evidence from Raider MARUSICH which placed Brenda Harris in the far southeast corner of the living room;** [PL#573-8] rebutting GORMAN and DAVIS' trial testimony [PART I, p. 38]. The Court refused to allow the Plaintiffs to call or admit the F.G.J. testimony of Mobile Crime Lab Photographer Earl Holt who was at the scene on December 4th and found no evidence of shots on the west walls of the apartment. He refused to allow the complaints sworn to by the Defendants which charged the Plaintiffs with attempted murder although they directly contradicted their trial testi-

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* He allowed the Rule 36 Admissions to be read, as well as depositions, but did not allow the reading of testimony from FGJ, SSGJ, CIT, and documents which comprised about 80% of the evidence.

** The statements of these raiders --HARRIS,MARUSICH, et.al., had been admitted earlier on Plaintiffs' case but their reading was not permitted at that time and the Judge would not allow them to be read in lieu of calling these former Defendants on rebuttal.

mony. [PL#530-545] He also would not permit evidence of a parafin test on Hampton which showed no "unburned gunpowder fragments on his hands." [PL#567, o.p.] This wholesale rejection of Plaintiffs' rebuttal case was both erroneous and vindictive, as the evidence was probative, relevant, was in direct conflict with the Defendants' case, and was not necessary to make the Plaintiffs' prima facie case. See Weiss v. Chrysler Motors Corp, 515 F.2d 449 at 457-8 (2nd Cir. 1975).

C. THE "CUTOFF ORDER"

In late October, 1976, the Court ordered that the Plaintiffs finish their case in chief by January 7, 1977.* At the time of issuance of the order, only the F.B.I. Defendants and the Plaintiffs had testified. Of the 10 months of trial, only three months of 4-hour days had been spent with testimony in front of the jury. Of the delays, mostwere directly attributable to the Defendants' willful concealment of evidence. [See Affidavit of G. Flint Taylor, Appendix B] At this time Zimmers (and the physical evidence) had not been introduced, as well as such key witnesses as HANRAHAN, GROTH, JALOVEC, CARMODY, BERMAN, and ROBERT PIPER. The cutoff order was constantly used as a weapon, the Court rejected the Plaintiffs' request to hold a conference to streamline the many complex and time-consuming evidentiary problems which loomed ahead.** Because of this cutoff order, the Plaintiffs did not have time to call:

1) State Coverup Defendants--especially ERVANIAN, SADUNAS, KOLUDROVIC and MULCHRONE-- whom they specifically attempted to call. This prevented the strongest evidence on the issue of state coverup from going to the

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* Due to various delays, this deadline was extended until March 15th.

** The Court never held a pre-trial conference on the evidence or on the issues, and specifically refused to require stipulations or rule in advance on the admissibility of such items as the Model, an architect's sketch, the Andrews evidence, and a film of the apartment taken right after the raid. As a result, two weeks were spent with F.B.I. model builder Peyton, 3 days with architect Howard Alan, 1 day with Andrews (cut short by his committment elsewhere), 4 days with filmmaker Michael Gray.

jury, as these powerful admissions were struck after they were dismissed.

2) Milton Branch: F.G.J. attorney who would have testified that the Federal Grand Jury was a "coverup", that the State Defendants were treated preferentially by the F.G.J. staffs and that the F.B.I. involvement was kept from them.

3) Arthur Jefferson: Staff, Senate Select Committee on Intelligence, to give expert testimony on the goals and purposes of the F.B.I. Counter-intelligence program as directed against the B.P.P.

4) Larry Deaton, Arnold Kanter, et. al., to testify concerning the coverup during this trial--this was also substantively blocked by the Judge.

5) Sheldon Waxman, former U.S. Attorney assigned to this case--to testify about the origins of the recent Federal coverup.

6) Herbert McDonnell, Francis Andrew, and 8-10 former assistants at the People's Law Office who would have had to have been called to establish the chain of Andrew's evidence in order to satisfy the Judge's punitive ruling that the Plaintiffs would have to prove this chain (despite the Defendant's prior stipulation) before Zimmers could testify about his examination of this evidence.[See: PART THREE, p. 112].

This cutoff order operated to further limit and exclude evidence relevant to the Plaintiffs' claims and was another erroneous and vindictive ruling by the District Court. See: Chapman v. Kleindienst, 507 F.2d 1246 [7th Cir. 1975].

IV. THE SUPPRESSION OF EVIDENCE IN THE TRIAL COURT DEMANDS REVERSAL OF THE JUDGEMENT, ENTRY OF SANCTIONS AND REMEDIES UPON RETRIAL.

A. PREJUDICE TO PLAINTIFFS' CASE

It is an elemental principle of civil litigation that the parties are to receive their discovery prior to trial, so that a fair and orderly trial, "a search for truth, rather than a sporting event" may be conducted. Hickman v. Taylor, 329 U.S. 495 (1949); U.S. v. Proctor and Gamble, 356 U.S. 677 (1958). This principle is especially important in civil rights litigation, Wood v. Brier, 54 F.R.D. 7 (E.D.Wisc. 1972) at p. 11. The Plaintiffs consistently sought this discovery from late 1973 until the trial was completed. They were met at every turn with false representations by the Defendants, and orders by the trial Court which often rubber-stamped the Defendants' positions, thus allowing Defendants to determine relevancy for the Plaintiffs. The actual prejudice resulting from this manipulation of the discovery process, combined with Defendants' non-compliance with discovery orders, is overwhelming. The Plaintiffs did not receive over 85% of the documentary evidence which they offered at trial until after the jury was selected. They received over 35,000 pages of documents to review and digest while the trial was progressing, and had to digest the information while examining witnesses on the stand --oftentimes the very witness who had authored the documents. The delays occasioned by the tardy production of documents precluded an orderly and powerful presentation of Plaintiffs' case, irrevocably prejudicing the Plaintiffs in the eyes of the jury --a jury forced to sit through 6 months of trial for two months of testimony, while the judge alternately accused the Plaintiffs of "stalling" or took the blame himself. Defendant JOHNSON was allowed an almost total lapse of memory concerning his pivotal role in the F.B.I.'s programs to

destroy the B.P.P., because the bulk of instructional memos approved by him were produced after he left the stand. The Plaintiffs were not able to expose or impeach many of the palpable falsehoods which Defendant MITCHELL put forward from the stand,* as the bulk of his direct examination was finished before the long-suppressed documents were produced in open Court, and the Plaintiffs chose to exercise the right to recall MITCHELL rather than digest 25,000 pages of documents, over half authored by MITCHELL, while forced to continue with his examination. Plaintiffs discovered the names of many key witnesses (and potential Defendants) after the trial had started, and were unable to depose them. Plaintiffs were forced to examine witnesses before the jury with no discovery (such as Stanley and McCabe) or were forced to forfeit their evidence entirely (such as William Sullivan and George Moore).** When Plaintiffs received certain documents while the Defendants were on the stand (such as the COINTELPRO Documents with JOHNSON and the Instructions with PIPER), they were forced to question these key Defendants cold, with no discovery as to how they would defend against the documents. Additionally, PIPER, after the Instructions Files were produced, changed his defense, saying that he was acting pursuant to Bureau Policy and Executive Mandates --which could be uncharitably termed an "Eichmann defense."*** In sum, the Court forced the

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* For example, the MITCHELL admission [PL#91] that O'NEAL had caused the raid would have powerfully challenged his denials at trial; and WON#3, which showed that MITCHELL touted O'NEAL as a key counterintelligence agent and sought a raise for him because of this. (MITCHELL had testified that he sought the raise because O'NEAL had helped to find a fugitive police killer.)

** Moore and Sullivan were out of the jurisdiction and the Court refused to order their production as witnesses, or to allow the Plaintiffs to depose them during trial. If the Plaintiffs had had discovery pretrial, they could have completely deposed Moore and Sullivan and introduced their depositions at trial in lieu of testimony if they were outside of the 100-mile jurisdiction.

*** In support of this Defense, he relied on a Roosevelt directive issued on the eve of World War II and a Truman directive issued during the Cold War. [See F.D.#8-10.] The unfairness of such a change in Defense based on evidence suppressed is obvious. See: Brennan v. Automatic Toll Systems, Inc., 60 F.R.D. 95 (S.D.N.Y. 1973).

Plaintiffs to go to trial without their discovery, resulting in a six-month discovery hearing before the jury and precluding a concise and effective presentation of their case, as well as effective cross-examination of the Defendants, and key hostile witneses. Such massive prejudice to a litigant's case, in all probability unequalled in the history of American jurisprudence, mandates reversal. See: Goldman v. Checker Taxi Co., 325 F.2d 853 (7th Cir. 1963); Seabolt v. Penna. Railroad Co., 290 F.2d 296 (3rd Cir. 1961); McDougall v. Dunn, 468 F.2d 468 (4th Cir. 1972); and see also, Krause v. Rhodes, 390 F.Supp. 1072, 1073 (N.D.Ohio 1975)(in complex and emotional case, Kent State every scrap of information should be produced pretrial); U.S. v. Continental Casualty Co., 303 F.2d 91 (4th Cir. 1962). On the right to full cross-examination, see: Pointer v. Texas, 380 U.S. 400 (1965); Dixon v. U.S., 333 F.2d 348, at 354 (5th Cir. 1964); King v. U.S., 105 F.988 (5th Cir. 1962).

B. THIS COURT SHOULD ENTER SANCTIONS AGAINST THE FEDERAL DEFENDANTS.

Although the Court refused to order a hearing into the misconduct of coverup by the Federal Defendants, even after MITCHELL's "Rockford Document" slip exposed their massive suppression of evidence for all those not blind to see, the record as it stands more than amply supports severe sanctions against the Federal Defendants. The Plaintiffs first subpoenaed Defendant MITCHELL for the relevant documents concerning the raid, the Plaintiffs, and O'NEAL in late 1973.* F.B.I. Agent Thomas Vornberger, acting for MITCHELL and MITCHELL's attorneys Kanter and Waxman, searched all the F.B.I.'s files and produced some 75 documents representing that these were all of the documents "relevant" to Plaintiffs' case. MITCHELL, an extremely careful and precise man, had authored over 10,000 pages of documents based on information from O'NEAL alone, yet he

* Before the first documents were produced, O'NEAL falsely denied that he had supplied a floor plan and MITCHELL told the lie that he knew nothing about COINTELPRO, had no involvement with the Program, and that it had nothing to do with the raid.

allowed his attorneys and his agent to make such a representation in his name. The Federal Defendants and their attorneys attempted to prevent O'NEAL from being served with process. Only after former Assistant U.S. Attorney Waxman exposed their misrepresentations, was O'NEAL "found" and produced for service. The Defendants avoided production of key admissions by PIPER and MITCHELL [PL#83 & 91] (which were part of the O'NEAL file and which reflected payments to O'NEAL) by producing an affidavit from MITCHELL reciting the payments, rather than producing the documents themselves. PIPER, as the only Federal Defendant still working out of the Chicago office, was deeply involved in the review and suppression of the evidence even in pretrial stages. He reviewed all of the Counterintelligence documents --during the same time period as the Plaintiffs first sought them-- and had to have his "memory refreshed" as to the Fort "hit letter" as well as to the fact that he and JOHNSON approved a document citing the raid as a counterintelligence action. PIPER and Kanter reviewed Maria Fisher's informant file in 1975, and therefore saw the 12/3/69 document which recited that she had told MITCHELL that the weapons at 2337 W. Monroe were "legally purchased:" a document obviously relevant to Plaintiffs' case.

The attorneys for these Defendants made repeated representations to the Court, during pretrial, that they had reviewed all the B.P.P. and Plaintiffs' files and had produced for Plaintiffs everything relevant. Mr. Kanter even secretly ordered the F.B.I. file on a Plaintiffs' witness before he deposed her. Kanter denied that a floorplan of the B.P.P. headquarters existed in the files, even though it later surfaced. The Federal Defendants carefully devised rationales --which the Court readily adopted by order-- which allowed them to knowingly hide evidence of their guilt.*

*For example, the Court ordered the F.B.I. Defendants to produce only those documents "disseminated to state agencies" to shield the PIPER admissions in Internal Bureau memos, and COINTELPRO's directed at the Plaintiffs-"by name" to shield the Fort "hit letter."

This willful misconduct accelerated during the trial. On the eve of trial, the Federal Defendants were ordered to review their files and make certain that all information about, or referring to, the Plaintiffs was produced. Nothing was forthcoming. In late January, the Defendants were ordered to produce all the files on the Plaintiffs and O'NEAL. After a month of turnovers, some 1000 pages were produced, and the Government attorneys repeatedly represented that these were the complete files as ordered. During this time, JOHNSON, MITCHELL and PIPER were in the Courtroom every day, and were fully aware of the Court's orders. PIPER supervised the production of the documents, and assured Kanter that he had been through all of the O'NEAL files.

When MITCHELL made his blunder, the Defendants and their attorneys still attempted to cover up their willful suppression. MITCHELL attempted to avoid production until after his direct testimony was finished. He attempted to mask the non-production by "searching" for the "Rockford Document" in files which had not been ordered turned over, rather than in the Hampton and Clark files in which he knew the document would be found. Additionally, O'NEAL attempted to influence Plaintiffs' witnesses not to testify during the very time periods he was in the closest trial contact with MITCHELL and his attorneys, and was paid an exorbitant amount of money, over his attorney's signature, purportedly for preparation and testimony.*

The record is more than sufficient to show willful, contemptuous behavior on the part of the Federal Defendants and their attorneys. Such misconduct, unfortunately, is not uncommon to the Government, especially in important political cases. The perjury of F.B.I. S.A.C. Trimbach and other willful coverup

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* That this was "hush money" rather than money for travel, as the Government contended, is supported by Kanter's representation on October 29 that it would take "an unknown period of time" to produce O'NEAL for testimony, although on that very day he approved a voucher for over $500 for payment to O'NEAL for his supposed travel to Chicago on October 29th. [C Tr.18918, PL#WON#39, Tr.23311]

and misconduct by the F.B.I. and Government attorneys led Judge Nichol to dismiss in disgust the case against the A.I.M. leaders who were charged after the Wounded Knee takeover. U.S. v. Means and Banks, 383 F.Supp. 389 (D.S.Dak.1974)

Judge Byrne was likewise forced to dismiss the case against Daniel Ellsberg and Anthony Russo because of the Government's suppression of evidence of its own illegality. U.S. v. Ellsberg* #9373, order of 6/ /73 . Although the Government is charged with a higher responsibility than a private litigant, they all too often, as they have here, obstruct and resist discovery. See Perry v. Golub, 74 F.R.D. 360 (N.D.Ala. 1976); E.E.O.C. v. Los Alamos Constructions, 382 F.Supp. 1373 (D.N.M. 1974); Kahn v. Secretary of H.E.W., 53 F.R.D. 241, 245 (D.Mass. 1971); Center of Corporate Responsibility v. Schultz, 368 F.Supp. 863 (D.D.C. 1973).

Such blatant and willful misconduct by government officials must be met with strong measures. The importance (and sheer volume) of the evidence which the Defendants withheld has been amply demonstrated in Parts One and Four, above. The withholding by Defendants resulted in massive prejudice against Plaintiffs' case. In addition to this prejudice, the Plaintiffs were forced to suffer through an 18-month trial (the length of the trial largely due to the misconduct of these Defendants and their attorneys*), forced to prepare this appeal and await re-trial, all on meager resources. The willful participation of Defendants and their attorneys in the concealment of evidence is clear from the record, and this Court should therefore order that a default judgment be entered against these Defendants, see: Paine Webber, et al. v. Inmobiliana Media de Puerto Rico, 543 F.2d 3 (2nd Cir. 1976); Rule 37 F.R.C.P. or alternatively, on retrial, strike their answer, bar their defense of good

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* We do not mean to excuse the Court from its role in this sordid affair, but, unfortunately, Plaintiffs can find no law by which they may seek sanctions, other than rebuke by this Court.

faith and prohibit introduction of their self-serving documents (see: Von Brimir v. Whirlpool Corp., 536 F.2d 838 (9th Cir. 1976); Kahn v. Secretary of H.E.W. (supra); Center on Corporate Responsibility v. Schultz (supra); Emerick v. Fenwick Industries, 539 F.2d 1379 (5th Cir. 1976); and see also U.S. v. Robinson, (#77-1097-8) F.2d (7th Cir. 1977)(slip opinion at p.8, ftnt. 5)). And finally, costs for the trial and the appeal, and attorneys' fees* should be assessed against these Defendants.

C. THE PLAINTIFFS SHOULD BE AFFORDED COMPLETE DISCOVERY UPON RETRIAL

As has been set forth above, there is much relevant documentary evidence still to be produced for the Plaintiffs. This evidence falls into the following general categories:

1) Deletions made by the Government in the documents turned over to the Plaintiffs (and upheld by the Court);

2) Entire documents withheld by the Defendants from file turned over to Plaintiffs (and upheld by the Court) (primarily 7 volumes of Instructions);

3) Files purportedly reviewed ("spotchecked") by the Court and returned to the Defendants (primarily the B.P.P. file and the IBERIA HAMPTON file);

4) Files not ordered produced.

From the discovery and belated admissions of the Government, the Plaintiffs know of the following files and documents that exist and which are either relevant in toto, or contain relevant documentation.

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* Donahue v. Staunton, 471 F.2d 475 (7th Cir. 1972); Stolberg v. Members of Board of Trustees, 474 F.2d 475 (1st Cir. 1973); Civil Rights Attorneys Fees Awards Act of 1976, Pub.L.No. 94-559, 90 Stat. 2641, effective October 19, 1976.

1) The rest of the Instructions and Directives found in the Chicago F.B.I. files (7 volumes are sealed in this record, others are in the B.P.P. file and other files in the Defendants' possession;

2) The rest of the B.P.P. file (returned to Defendants);

3) The IBERIA HAMPTON v. DANIEL GROTH file which has been returned to the F.B.I. Defendants by the Court;

4) The informant file of those informants reporting to ROY MITCHELL during 1969 and 1970;

5) The B.P.P. files entitled "Raids" and "Acquisition of Weapons;"

6) The Department of Justice (and U.S.A.) file on the Leonard F.G.J. investigations;

7) The "Do Not File" file in the Chicago office of the F.B.I. --as it relates to activities against the B.P.P. and "Black Nationalist Groups," especially evidence of burglaries and other illegal acts;

8) The documents recording the National COINTELPRO Organization meeting attended by a Chicago Agent, dated 3/4-5/68 [same date as PL#2] , produced but denied by court and sealed;

9) The actual tapes of conversations which are summarized in the wiretap documentation --at least those of overhears of the Plaintiffs and their attorneys;

10) The personnel records of the F.B.I. Defendants --at the very least the evaluations that PIPER admitted he made on MITCHELL's work regarding the B.P.P. during 1969, as well as any evaluations of PIPER's work;

11) The F.B.I. manual in operation at the time in question --at least those sections which deal with Security Investigations*

12) The files on the attorneys who have represented the Plaintiffs;

13) The relevant documents in the F.B.I. Headquarters files concerning their policy towards the B.P.P., especially raids, and concerning the 12/4 raid, the F.G.J. investigations, and the trial of this Cause;

14) The complete Intelligence Division files on the B.P.P. and O'NEAL, including the mysteriously missing documents concerning the cancelled G.I.U. raid.

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* The Government has already turned this manual over in A.C.L.U. v. City of Chicago (supra).

It is finally time to heed the dictates of the Rules of Civil Procedure and the United States Supreme Court, and allow the Plaintiffs to determine for themselves what is relevant, Hickman v. Taylor(supra);Kerr v. U.S.Dist.Ct.(supra) Not one claim of executive privilege has been raised on any of these files by the Government, and indeed, none could be.* These files should be turned over to the Plaintiffs, or, at the very least, an impartial magistrate with a thorough understanding of Plaintiffs' case should be appointed to review any files upon which the Defendants raise objections. Plaintiffs have consistently sought what is relevant to their case --and as they became more knowledgeable, have narrowed and perfected their requests. They have consistently been right about their claims, and about the existence of the evidence necessary to prove the allegations in their complaint; they also have a uniquely accurate understanding of where and what this evidence is and where it is located --due to an agonizing education by Defendants' concealment. They must obtain their evidence upon re-

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* The Government almost as an afterthought, asserted a blanket attorney-client privilege on the entire 17½ volume IBERIA HAMPTON file; after one key document had already been turned over [PL#114] . The Court, after allegedly looking through the file, ruled that the file in its entirety was privileged and further stated that PL#114 should never have been produced. [Tr.40416-94 I.C.] This file is clearly not work product, as it is an F.B.I. file, having nothing to do with the impression of the attorney, nor even his file, but rather files required to be kept in the ordinary course of business. See: U.S. v. Brown, 478 F.2d 1038 (7th Cir. 1973); Handgards, Inc. v. Johnson and Johnson, 413 F.Supp. 926 (N.D.Cal. 1976); Advisory Committee Note to Rule 26(B) 348 F.R.D. 497 (1970); Galamus v. Consolidated Freightways, 64 F.R.D. 468 (N.D.Ind. 1974). The one document produced shows PIPER's pretrial involvement in the coverup as well as his and his attorneys' knowledge of the files which were suppressed. Plaintiffs suggested this file contains a record of the involvement of the Defendants, especially PIPER in this concealment, and their knowledge and careful review of the files that they kept suppressed. It may also contain evidence of the Court's ex parte contact with the Defendants as his viewing at trial of F.B.I. documents with Defendants' assistant Deaton in all probability is but one example. Evidence of illegality, coverup and the continuing conspiracy cannot be privileged, and the showing of fraud and concealment by the Defendants and their attorneys, as reinforced by the one document produced from that file, certainly vitiates the privilege (see Burlington Industries v. Exxon Corp., 65 F.R.D. 26 (D.Md. 1974), if it had not already been breached by the circulation of the documents to F.B.I. agents at the conferences held to discuss the concealment.

trial, be allowed to take appropriate depositions upon this discovery, and to properly join those parties whom the discovery shows to be proper parties. A complete hearing must be held to determine whether the Government has fully complied after they produce these files. To do less would be to allow this conspiracy to continue. After 8 years, it is time for it to be rebuked.

PART FIVE: THE MASSIVE PREJUDICE OF THE COURT BELOW

. . .

MR. HAAS: Well, Judge, I just don't like the rules changing as we go along. That is what I object to.

THE COURT: Well, you don't like anything, as far as you are concerned, except your way --

MR. HAAS: Well, Judge, there hasn't been anything that has happened --

THE COURT: -- and you are not going to have your way.

MR. HAAS: I know. My way is a fair trial, and I know I'm not going to get it, Judge. That is totally clear in this courtroom.

THE COURT: You bet your life you are not going to get it.

. . .

[Tr.3365]

I. THE PREJUDICIAL CONDUCT OF THE TRIAL COURT DENIED PLAINTIFFS A FAIR TRIAL AND REQUIRES REVERSAL

The entire record demonstrates that the trial judge was not an impartial judge representing the impersonal authority of the law, but was both an advocate from the bench for the Defendants' cause, and an "activist seeking combat" with Plaintiffs' counsel, Mayberry v. Pennsylvania, 400 U.S. 455 (1971); Offutt v. United States, 348 U.S. 11 (1957).

The Court's bias and prejudice was consistently demonstrated by the Court's conduct and remarks during the trial. As a result, the trial was reduced to a

sham proceeding, violating Plaintiffs' basic Fifth Amendment guarantee to Due Process and fair trial. See Hughes v. Heinze, 268 F.2d 864 (9th Cir. 1959); Frank v. Mangum, 237 U.S. 788 (1915)(Justice Holmes dissenting).

> One of the fundamental rights of a litigant under our judicial system is that he is entitled to a fair trial in a fair tribunal, and that fairness requires an absence of actual bias or prejudice in the trial of the case.
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> . . .
>
> When the remarks of the judge during the course of a trial, or his manner of handling the trial, clearly indicates a hostility to one of the parties, or an unwarranted prejudgment of the merits of the case, or an alignment on the part of the court with one of the parties for the purpose of furthering or supporting the contentions of such party, the judge indicates, whether consciously or not, a personal bias and prejudice which renders invalid any resulting judgment in favor of the party so favored. Knapp v. Kinsey, 232 F.2d 458, 465-466 (6th Cir. 1956), cert. den. 352 U.S. 92 (1956).

This Court has consistently reversed when there has been a showing that the trial judge did not remain "impartial," "judicious" and "neutral," as the law requres. See United States v. Dellinger, 472 F.2d 340 (7th Cir. 1972), cert. denied 93 S.Ct. 1443 (1973); United States v. Tobin, 426 F.2d 1279 (1970); United States v. Hill, 332 F2d 105 (1964); United States v. Fry, 304 F.2d 296 (1962); United States v. Carmel, 267 F.2d 345 (1959); United States v. Scott, 257 F.2d 374 (1958); and United States v. Levi, 177 F.2d 833 (1949).

As in United States v. Dellinger, supra, the trial judge's "deprecating and often antagonistic attitude . . . is evident in the record from the very beginning." 472 F.2d at 386. On the first day of jury selection he announced to the entire venire that the case was about a "gun battle" which, of course, was the Defendants' theory of the case.* [Tr. 1/5/76, p. 12]**

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* He later corrected this glaring misstatement, one of the few times that he did. [Tr. 1/6/76]

** This is from 1/5/76 in the afternoon --as the Court reporter erroneously numbered both the A.M. and P.M. sections starting at 2:00.

A. SELECTION OF THE JURY

The Court, in conducting the voir dire itself, showed a marked disregard for the sensitivity of the issues and the mammoth amount of publicity that had been generated over the seven years prior to trial.* A standard and scientific public opinion survey conducted by the National Fair Jury Project in 1975 demonstrated a profound prejudice against the Plaintiffs and the Black Panther Party --fully 31% of those surveyed said that the Plaintiffs should not collect damages, even if the police were shown to be wrong; 46% (vs. 5%) said they would be more likely to believe a police officer than a Black Panther, 38% of the people felt that black people were "more violent" than whites, 49% thought that the government should use "any means necessary" to "destroy" groups which "threaten our system of government," and fully 63% had an opinion on who was wrong concerning the December 4th raid.** [See affidavit of Jay Shulman, Appendix C]

Despite this powerful evidence of racism and prejudice against the Plaintiffs, the Court refused to allow lawyer voir dire. A special venire of 400 jurors was called for jury selection. Of these, only 23 were black persons, although 17% of registered voters in the District were Black.*** During this voir dire, the Court read a standard list of questions, which avoided rather than encouraged the jurors' expression of their opinions about racism, the facts of

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* The F.B.I. clipping files, by no means complete, had over 1000 news articles from the Chicago area.

** This strong community prejudice against the Plaintiffs was corroborated by the voir dire itself --where 13 jurors excused for cause whose prejudice can be accurately assessed from the record, 12 were excused for prejudice against the Plaintiffs, and 1 for Defendants. See Tr.546-8, 581, 655, 930, 1037, 1193, 1610, 1866, 1892, 2374, 2454, 2470.

*** Of the 400, 150 were selected for the first panel; 15 of those were Black. The Plaintiffs moved to quash the panel, and this was denied.

the case, or pretrial publicity. The Court's reading of the questions was so mechanical and insensitive to the individuality of the prospective jurors that he invariably asked blacks if they belonged to the Ku Klux Klan and whites if they belonged to the Black Panther Party.* He referred to Blacks as "colored people,"** exposed his 50-year membership in the until recently segregated Masons, *** often avoided followup questions when answers displayed either a pro-police attitude or exposure to pretrial publicity, and rehabilitated those who made answers which suggested they be excused for cause.**** The jury selected had an average age of approximately 50 years, had 5 whites and one black;***** the four alternate jurors were white.******

The Court tightly controlled the voir dire, and attempted to select a jury which he could manipulate to agree with his view of the case and return a verdict for the Defendants. In such a highly controversial case as this, with such wide publicity and community bias against one party, it is entirely inappropriate to have such a shallow voir dire******* --especially when conducted by a judge who had already prejudiced the case against the Plaintiffs.********

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* See ex., Tr.397, 832.

** See, Tr.1733, and voir dire of George Heavens.

*** See, voir dire of James Turner.

**** See, ex., voir dire of Katherine Griffith.

***** Plaintiffs' challenge for cause of Juror Laura Pelz, who became the foreperson, was denied, despite the fact that she was dating a police officer at the time of trial. [Tr.1006]

****** None of the jurors except one alternate, who was excused to go back to school, had more than a high school education.

******* A shallow voir dire operated in the interests of the Defendants and the Judge due to the pervasive bias in the community against the Plaintiffs and the B.P.P. --bias which would have been exposed by a probing voir dire.

******** See: U.S. V. Dellinger (supra); Ham v. South Carolina, 409 U.S. 524 (1973).

B. THE COURT CONSISTENTLY DENIGRATED PLAINTIFFS' EVIDENCE IN FRONT OF THE JURY.

During the trial, the Court consistently and repeatedly disparaged many key points of the Plaintiffs' case:

-- When Plaintiffs' counsel attempted to question Counterintelligence Coordinator McCabe as to whether "neutralize" [see PL#1] could mean to "get someone killed," the Court stated that such a question "bordered on sensationalism." [Tr. 5827-30]

-- The Court called questions posed to Defendant JOHNSON concerning the use of a floorplan for a raid "speculative;" [Tr.4936]

-- The Court called questions as to why Alcohol, Firearms and Tax Division were not given information which would have given them jurisdiction for the raid "far afield;" [Tr.5203]

-- The Court stated that how O'NEAL received increased payments was "not an issue." [Tr.5097]

-- The Court repeatedly questioned the relevancy of the time of political education classes attended by Plaintiffs, calling it "minutae," although this was key to the planning of the raid. [Tr.7028, 7953, 102, 10261]

-- The Court told the jury that intercepted overhears between HAMPTON and his lawyers were not "attorney-client" and that wiretap evidence introduced by the Plaintiffs was "not of importance." [Tr.9107-9]

-- He labeled questions posed PIPER concerning the timing of obtaining the floorplan as "insulting." [Tr.9277-8]

--He termed questions concerning investigations and files kept by the Federal Defendants on financial contributions to the B.P.P. "irrelevant." [Tr. 10241 - 4]

-- The Court referred to questions concerning PL#61, which disputed MITCHELL's contention that there were illegal weapons at the apartment, as a "small matter." [Tr.7841]

-- The Court called questions posed Defendant JONES concerning the first shot fired at the HAMPTON apartment (the evidence showed that JONES fired that first shot) "inconsequential," "irrelevant," and "constant repetition." [Tr.34877-80, 34895-6]

-- When Defendant DAVIS changed his testimony concerning where Mark Clark was sitting when DAVIS entered the apartment and shot him, the Court smirked at Plaintiffs' cross-examination and called the point "ridiculous." [Tr.33964-6]

-- When Plaintiffs pressed Defendant CARMODY as to whether he had shot HAMPTON in the head at close range, the court told the jury there was "no evidence whatsoever" of such an assertion. After argument, the court elicited a denial from CARMODY, then struck the testimony.

-- During questioning concerning nailholes which were identified as bullet holes in the Tribune Exclusive, and during questioning concerning the televised re-enactment, the Court repeated, "Let's get to the facts of this case." [Tr.27542, 27580]*

-- The Court repeatedly denigrated Plaintiffs' conspiracy allegations by stating there "hadn't been one word of evidence" of what "actually occured on December 4" in five months of trial [Tr.10659-85] and later, "We've been going for six months, it's time to know what happened." [Tr.14028] **

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* He also told the jury that Defendant GROTH was not responsible for what was in the newspapers --although he had participated in HANRAHAN's press conferences and given an interview for the Tribune "Exclusive." [Tr.25622]

** The Court showed similar contempt for elements of the Plaintiffs' proof outside the jury's presence, slandering HAMPTON's leadership qualities in comparison to Dr. King and Elijah Muhammed [Tr.3809] and rejected documentary evidence concerning the drugging of HAMPTON as "cluttering up the . . . [record]" [Tr.11437]

The Trial Court also often chastised Plaintiffs and their witnesses for real or imagined "offenses" much less serious than those engaged in by the Defendants:

-- Plaintiffs' witness Robert Zimmers, perhaps the foremost firearms expert in the country, was subjected to the Court's ire and accusations. The Court told Zimmers not to argue the case for the Plaintiffs, and repeatedly admonished him for "arguing" with defense counsel and told the jury that Zimmers "clearly did not want to admit a mistake." [Tr.20579-80, 20135-42, 20511]

While O'NEAL and other Defendants volunteered prejudicial answers at will, the Court saw fit to chastise only Plaintiffs' witnesses and would interrupt them in mid-answer if he sensed the answer to be harmful to the Defendants, or not responsive:

-- The Court attacked Plaintiff BELL when he summarized a conversation in which BELL, HAMPTON and O'NEAL were present rather than recite the conversation verbatim, implying that BELL's answers were intentionally in violation of the Court's order, and threatened to terminate his testimony.* [Tr.14343, 14348-51]

-- Plaintiff TRUELOCK was accused of deliberately attempting to bring O'NEAL into his testimony; told to stop answering "evasively;" instructed to answer "yes or no;"** and allowed to be questioned about possible perjury.*** [Tr.16217]

-- The Court told Plaintiffs' witness Bob Rush that he wanted an answer not a speech, and told the jury that Rush "was not willing to testify correctly" and told witness Bruce to cease giving voluntary answers. [Tr.28657-9, 28494]

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* Compare with HANRAHAN's recitation of a "conversation." [Tr. 28039-42]

** Compare with the Court's repeated refusal to so instruct defendants, saying he could not tell a witness how to answer. [Tr.28039-42]

*** Compare with his protection of Defendants concerning possible criminal violations (supra). [Tr.34528]

C. THE COURT AIDED THE DEFENSE AND PROTECTED THEIR WITNESSES

In stark contrast to the treatment afforded the Plaintiffs and their evidence, the trial court aided the Defendants and supported their cause throughout the trial, in its rulings and remarks from the bench.

The Court volunteered protective comments; unduly restricted questioning in key areas; elicited explanation and self-serving opinions from Defendants when needed; and allowed non-responsive answers to stand:

-- When Defendant PIPER was asked if a natural consequence of passing the floorplan and information about illegal weapons would be a raid, the Court volunteered that that was "not the Defendant's responsibility." [Tr.9313]

-- When Plaintiffs questioned PIPER about his written admission taking credit for the raid and his in-court statement that the raid was a "success," the Court cut short the examination as argumentative, repetitious, and far afield. [Tr.9527-36]

-- When questions were asked of PIPER as to HAMPTON's placement in the F.B.I.'s Security Index" (and therefore be subject to arrest without charge during "civil disturbances,") the Court intoned: "Let's not get into National Security." [Tr.10940]

-- The Court stated that there was no evidence to contradict Defendant JOHNSON's assertion that he did not see the floorplan [PL#21, Tr.5222], despite the face of that document itself, directed to S.A.C.

-- The Court would not allow the bias (or knowledge) of F.B.I. chemist Gormley to be probed concerning his knowledge of the F.B.I.'s role in the raid, saying "He doesn't know anything about that." [Tr.32973-6]

-- The Court refused to allow JOHNSON to be questioned about a documented conversation between Jerris Leonard and Defendant HANRAHAN, [PL#24] say-

ing that the workings ofthe Grand Jury were secret, and the jury was not allowed to hear it.

-- When PIPER was questioned concerning his failure to inform JOHNSON of the floorplan before JOHNSON testified before the federal grand jury, the Court intoned: "Ask questions without inferences," [Tr.9818-9] and upheld the Defendants' position that PIPER was under no obligation to provide the federal frand jury with any information.*

The Court repeatedly protected the Defendants and theirwitnesses, in marked contrast to his chastisement and attacks on Plaintiffs:

-- After Defendant JOHNSON had remembered little but his name, called a "hit" a "non-violent act," [Tr.4005-64] testified that "impel" meant to restrain," [Tr.4278-85] the Court incredibly volunteered to the jury that JOHNSON had not been evasive in any way. [Tr.5336]

-- When Defendant MITCHELL denied a recent three-day meeting with O'NEAL in his morning testimony, then avoided perjury by "correcting"himself in the afternoon session, the Court interrupted Plaintiffs' examination to elicit that the meeting was "F.B.I. policy" and to tell the jury that attorney Kanter had a perfect right to be present at those meetings. [Tr.6464-5, 6475]

-- The Court asked MITCHELL if it was his general practice to obtain a floorplan [Tr.6950-51]** and asked HANRAHAN if it was at all unusual to go on a raid at 4:00 a.m. [Tr.27344]*** Defendant GORMAN was pressed about

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* The Court reaffirmed that position outside the jury's presence, stating that PIPER "had no obligation to hunt the Grand Jury up." [Tr.9844]

** MITCHELL answered yes, although, in point of fact, the only floorplans obtained by MITCHELL and introduced into evidence were the floorplans of the B.P.P. office and of Hampton's apartment --both of which were used for raids. [See generally, 51 vol. of documents.]

*** The Court made Hanrahan an instant expert in police procedure, as HANRAHAN quickly answered that it was normal police procedure. However, the judge sustained objections to questions put to HANRAHAN about legal requirements for a search warrant.

bringing a machine gun on the raid, the Court asked him, obviously knowing the answer, if there were any regulations against carrying such a weapon.

-- The Court undermined a key omission by the Defendants --not bringing tear gas or bullhorns on the raid-- by sustaining objections and saying, "deal with what happened, not what did not happen."* [Tr.34555-65]

-- When a crucial fact set forth in GROTH's search warrant was contradicted in another document written by GROTH, he elicited GROTH's self-serving explanation for the discrepancy. [Tr.25412-4, 8]

-- He would not allow the Defendants to be questioned about constitutional violations, or violations of the law, which the evidence showed that they were involved in.**[Tr.5642, 11120-1, 11130, 11143-7, 23115-30] He repeatedly allowed the Defendants to volunteer non-responsive answers, the most flagrant being the MITCHELL "Rockford" answer*** --and then refused to strike the answer or allow it to be impeached.**** He constantly protected the Defendants and their witnesses by sustaining objections to valid questions, or minimizing the effect of the question to the jury by direct intervention or comment.*****

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* The Court later barred the Plaintiffs from arguing in closing that the Defendants did not bring tear gas, bullhorn, etc., because they did not put on an expert to say it was proper police procedure! [Tr.36369]

** Theft, use of mails for sending threats, illegal wiretap, drug sales, failure to file income tax returns (O'NEAL), as well as wholesale violation of the Constitution. [Tr.5642, 11120-1, 11130, 11143-7, 23115-30, 21809, 24322.]

*** See: DISCOVERY SECTION, supra.

**** See, for example, HANRAHAN, [Tr.27957-63] O'NEAL. [Tr.22116, 22491-2, 23326-7, 22332]

***** See, for example, HANRAHAN, [Tr. 27051, 27016, 926, 935, 972] GROTH, [Tr.25285-7, 305-7] JALOVEC, [Tr.24574-5] MITCHELL, [Tr.7541, 7925-32, 8460-2] PIPER, [Tr.8724, 10499, 10458, 11201-30] O'NEAL.[Tr.22208-9, 22337-8]

-- When O'NEAL's vulnerability was exposed concerning payments of over $700 per week he received "for his testimony" during the six months before trial, the judge prevented probing under the guise that it would expose his identity. [Tr.23285-8, 23294-7, 23313, 325-6] Likewise, when O'NEAL disappeared from the stand for five days during the middle of his testimony, the Court told the jury that a member of his family was in the hospital, [Tr.22624] which was the Defendants' original story. When this was contradicted by O'NEAL's voir dire testimony upon return, the Court terminated the voir dire hearing, [Tr.22846-58, I.C.] refused to correct his remarks to the jury, refused to compel the Defendants to produce a doctor's note, [Tr.22783-4]* or allow him to be questioned before the jury concerning his sudden and mysterious disappearance. [Tr.24154-7]

-- When an appearent crib note was found in a book on the witness stand while Defendant CARMODY was on the stand, the Court refused to hold a voir dire hearing on the circumstances of the note [PL#EC#5, O.P., Tr.26721-8]**

-- When Defendant BRODERICK volunteered an answer falsely stating that firearms expert Zimmers' notes indicated a trajectory which could have been fired by the Plaintiffs, the Court would not allow BRODERICK's lie to be exposed through the use of Zimmers' notes (which had been qualified by Zimmers), but rather belatedly struck the answer. [Tr.34218-29, 34362-78, RZ 18 (O.P.)]***

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* He had originally ordered that such a note be produced. [Tr.2261 I.C.]

** The note had three phrases which had significance to CARMODY's answers --and were explanations that he gave for certain actions. The Plaintiffs chose not to question him cold concerning the note, suspecting the possibility of a well-laid trap.

*** The Court would not allow an offer of proof directly after BRODERICK's testimony where testimony on this issue could be elicited and BRODERICK then avoided Plaintiffs' subpoena and left the jurisdiction. [Tr.34386-7, 390-1]

-- Although the Plaintiffs had established through prior testimony that Defendant DAVIS was known in the black community as "gloves" because of his reputation for brutality, the Court angrily cut off questioning of Defendant JONES concerning the name, telling the jury that "that's not his name."*

-- Despite its obvious importance, the trial court would not allow Plaintiffs' attorneys, on cross-examination, to require the raiding Defendants to fix their locations on a blowup sketch of the apartment, using the pretext that they hadn't been questioned with the sketch on direct.**

-- In a flagrant example of the dual standard and ever-changing rules employed by the Court, it permitted Defense counsel to probe at great length in an effort to impeach expert Zimmer's conclusion that it was possible for the hole in the entrance foyer of the apartment to have been made by Defendant JONES' weapon. [Tr.19945-77] On redirect, when Plaintiffs' counsel attempted to show that defense counsel's contentions were based upon conclusions which did not take into account the clear indentation in the second door, the court would not allow it. The Court suddenly changed the rules, stating that the issue was no longer whether the gun could have fired that shot, but rather, whether it in fact did. The Court then found there was no evidence that it did, and refused to allow Zimmers to give his opinion that with the butt against the middle door, JONES' gun could make the mark Zimmers saw to the left of the living room door. [Tr.20510-20513]

-- The Court also protected Defendants by denying admission of documents which impeached them, then later admitting them after the witness was off

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* He later forbade all reference to this appellation.

** The accuracy of the sketch was established through architect Howard Allen, admitted into evidence, [PL#135] and was used by the Defendants during cross-examination of several plaintiffs.

the stand. [See D.G.#3 later admitted as 332 , CZ#1, WON#22 admitted as 305 .

-- The Court told the jury it was in MITCHELL's "discretion" to determine whether to seek a search warrant himself when MITCHELL was pressed as to why the F.B.I. did not execute the raid itself. [Tr.8460-2]

-- While Defendant HANRAHAN was on the stand, he aided the Defendants in obstructing questions concerning Sadunas' misidentification of shells N and O [Tr.27920-27, 933, 940]*

-- One of the most important and most concerted attempts to discredit the Plaintiffs' proof, and aid the Defendants' cause was in preventing challenge to GROTH's story that he had an independent informant, stating that the non-existence of the informant was speculative, [Tr.25299] and further stating that he did not care what the Plaintiffs' position on the issue was [Tr.25300] and to stop wasting time on the question. [Tr.25303] He informed the jury that GROTH had the right to refuse to reveal the informant's identity, even though the informant might be dead [Tr.25323-4] and prevented questions of GROTH designed to challenge the existence of the alleged informant.**

The trial court made every effort to prevent the Plaintiffs from probing the Federal Defendants' suppression of documents and coverup during trial, and attempted to minimize the impact of that proof of which the jury was aware:

-- Although MITCHELL's culpability in the suppression of documents had been established before the jury (and PIPER's established outside their pres-

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* When asked why SADUNAS rushed his report (Sadunas had admitted that the S.A.O. and certain police Defendants had pressured him), the Court said "How would he [HANRAHAN] know?" [Tr.27940] After the April directed verdicts, the Court commented that Zimmers' ballistics examination had nothing to do with the remaining case. [Tr.33335-6]

** He had a few days earlier ruled that the existence of the informant could be probed, but he resisted Plaintiffs' attempts to do this in front of the jury --miscasting the questions as attempts to get at the identity-- and refusing to allow the Plaintiffs to get GROTH's refusal to identify the informant (which he had earlier ruled the Plaintiffs could do) before the jury. [See Part Four, II, supra.)

ence), the Court repeatedly told the jury that this suppression was not the fault of the Defendants, and it they wanted to blame anyone, they should blame the Court. [Tr.7503, 7255, 7307-14]

-- The Court told the jury that the question of whether the Defendants had withheld the documents from the Plaintiffs was irrelevant to the issues of the case. [Tr.7943-7]*

-- The Court told the jury that if there was any withholding, it was perpetrated by the F.B.I., not the Federal Defendants on trial, that it should not be held against these Defendants, then repeatedly told the jury that "the F.B.I. was not on trial " [Tr.7307-14] and later told the jury to disregard any implication that there were files that had not been turned over. [Tr.8753]

-- He repeatedly thwarted Plaintiffs' attempts to expose the unreliability of prejudicial F.B.I. information, [Tr.11305-7, 11597-604, 613-14] telling the jury that "no organization could operate without making a lot of mistakes." [Tr.11305-7]

D. THE COURT ADMITTED INCOMPETENT, IRRELEVANT, AND HIGHLY PREJUDICIAL EVIDENCE AGAINST THE PLAINTIFFS

The Court also allowed the Defendants to influence the jury with extremely prejudicial and irrelevant material:

-- The Court admitted in evidence incredibly gory pictures of a dead policeman** with his head blown off --supposedly to balance a picture of HAMPTON's body, lying in the position CARMODY had removed it on December 4th. [Tr.9/28 and 9/30/76](After admission, Defendants chose not to publish these photos to the jury.)

-- He admitted F.B.I. documents, suppressed by the Defendants, which contained highly prejudicial hearsay information (with highly questionable re-

* The Court also assisted PIPER when he admitted that certain instructions were destroyed. [Tr.8723-4]

** Who, according to F.B.I. documents, was killed by a former Panther on November 13, 1969.

liability) about HAMPTON and the Panthers, for the stated purpose of disproving the conspiracy. [Tr.10682] He then allowed many of these documents to go to the jury during their deliberation, although he had previously dismissed the conspiracy charge. [Tr.36984]*

-- The Court allowed O'NEAL's irrelevant and highly prejudicial testimony that Plaintiffs' lawyers had given him $5000--by check--to start a Black Panther underground,** supposedly because Plaintiffs had opened this area up by questioning O'NEAL regarding an F.B.I. document reciting that he had received money from MITCHELL to buy a car and get out of jail.

-- The Court admitted a hearsay report of a Coroner's Chemist, with purported findings that HAMPTON's blood did not contain drugs at the time of death --even though no chain of evidence was established concerning the blood-- and then permitted the Defendants to argue the truth of the findings in closing.***

-- Plaintiff ANDERSON, at the time he testified, had recently been convicted of an armed robbery of a gun shop. When he testified to that fact on direct examination, the trial court ruled that cross-examination had been opened to the details of that occurence because "this case involves the use and possession of weapons." [Tr.15157] Taking full advantage of the Court's ruling, Defense counsel VOLINI extensively cross-examined ANDERSON about the robbery, [Tr.15154-260] and Defense counsel COGHLAN followed with extensive cross-examination about a statement given by ANDERSON about the robbery to a prosecutor,

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* He only allowed one F.B.I. documents of Plaintiffs --the floorplan-- to go to the jury. [Tr.36983]

** See Tr.23587-95, 23597-602, 23470-1, 23599-25, 23480-95, 23534-41, 24253-6, 24323-4. The F.B.I. had no documentation to substantiate the charge. (PL WON#48]

*** The Plaintiffs attempted to introduce Christintopolis' F.G.J. testimony, (which totally discredited him and his findings) since he was outside of the 100-mile limit and would not come in voluntarily; but the Court refused it.

[Tr.15735-44, 15573-5], forcing ANDERSON to repeatedly assert his Fifth Amendment privilege before the jury. The Court then allowed the Defendants to impeach ANDERSON's account of the occurrence by calling a prosecutor who had taken a statement from ANDERSON and permitting testimony by the prosecutor that ANDERSON had told him he possessed a sawed-off shotgun named "Paula" during the occurrence, which had taken place seven years after the December 4th raid. [Tr.32603]

E. THE COURT INFORMED THE JURY OF INADMISSIBLE EVIDENCE PREJUDICIAL TO THE PLAINTIFFS

The Court, on its own, added to the prejudicial information imparted to the jury during the course of the trial:

-- The Court found an opportunity to mention to the jury that some of the Plaintiffs had prior arrests (other than December 4, 1969), but they (the jury) had not heard about it because it had been discussed outside their presence. [Tr.21927-8] This highly imporper and prejudicial comment pales in comparison, however, to a statement the Court made during closing arguments. During the trial, attorney-client statements of several Plaintiffs were admitted into evidence, after objection of Plaintiffs' counsel.* These statements, on which the attorney-client privilege had never been waived by Plaintiffs or counsel, contained certain contradictions with Plaintiffs' trial testimony. [See Part One, III] Incredibly, during closing arguments, the Court told the jury that DEBORAH JOHNSON also had a lawyer-client statement but that he had not admitted it in evidence. [Tr.36597-8] This, coming in the middle of Defendants' closing argument, which was based primarily on the contradictions in the statements of the other four Plaintiffs, had to raise the prejudicial inference that

* Plaintiffs had moved that the four statements not be admitted, due to privilege; the Court denied the motion, and the Plaintiffs introduced three of the statements in their case.

Ms. JOHNSON also had made a damaging statement to her lawyer. This Court has recognized that:

> The influence of the trial judge on the jury is necessarily and properly of great weight, Starr v. United States, 153 U.S. 614, 628, 14 S.Ct. 919, 38 L.Ed. 841, and jurors are ever watchful of the words which fall from him. "The Judge occupies a position of great influence with the jury in conducting a trial; . . . he should be careful not . . . to say anything which might have the effect of prejudicing the cause of either party before those whose duty it is to decide on the facts." Virginian Ry. Co. v. Armentrout, 4 Cir., 166 F.2d 400, 405 [r A.L.R.2d 1064].
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> United States v. Wheeler, 219 F.2d 773, 777 (7th Cir. 1955), cert denied 349 U.S. 944 (1955).

The trial court below was not merely careless in its remarks and conduct before the jury. It fully recognized that its "words to the jury carried an authority bordering on the irrefutable," Moody v. United States, 377 F.2d 175, 177 (5th Cir. 1967), and took full advantage of its "position of preeminence and special persuasiveness," Pollard v. Fennel, 400 F.2d 421, 424 (4th Cir. 1968). The record is clear that the Court used its position to rehabilitate Defense witnesses whose credibility had been undermined and to cast doubt on the credibility of Plaintiffs' witnesses, United States v. Nazzaro, 472 F.2d 302 (2nd Cir. 1973); that in comparable situations, it exercised its discretion against the Plaintiffs and in favor of the Defendants. See United States v. Dellinger, 472 F.2d 340, 387 (7th Cir.1972).

The trial court's remarks and rulings were intentionally designed to denigrate Plaintiffs' case in the eyes of the jury. See United States v. Fry, 304 F.2d 296 (7th Cir. 1962); Myers v. George, 271 F.2d 168 (8th Cir. 1959), and "calculated to prevent the Plaintiffs from having the sort of trial to which they were legally entitled." Agee v. Lofton, 287 F.2d 709 (8th Cir. 1961). The Court's assumption of the role of an advocate from the bench for Defendant's requires reversal.

F. THE TRIAL COURT'S ACRIMONIOUS, DEMEANING AND THREATENING CONDUCT TOWARDS PLAINTIFFS' COUNSEL

From the beginning of this litigation, the trial court's attitude towards Plaintiffs' counsel was that of an adversary eager to do battle. This posture resulted in the Court's consistently and arbitrarily wielding a heavy gavel against Plaintiffs' counsel. The abuse of the bench in pretrial proceedings is exemplified by the trial court's reaction to Plaintiffs' pre-trial mandamus petition; the Court retaliated against Plaintiffs for this petition by sua sponte vacating its order allowing the recording of deposition by tape, [Tr.5/6/75, p. 1-11] and adding: "If you want to play this game with all the technicalities and be rough about it, we will take it on." [Tr.5/6/75, p. 8] (See Appendix A). The denigrating comments towards Plaintiffs' counsel similarly began during pre-trial with the Court's question to Mr. Taylor, "You don't know anything, do you counsel?" [Tr.5/7/75, p. 60] (See, Appendix A .)

These threats and comments from the bench continued throughout trial both in and out of the presence of the jury. It makes little difference for our purposes here whether the jury was present or not, since whenever the comments and threats were made, they show the judge was an "activist seeking combat," and are indicative of his partisanship against Plaintiffs. However, those which were made in the presence of the jury (most were) are particularly sinister, since they must have had a prejudicial impact upon the jury. See, United States v. Wheeler, supra.

During the trial, the Court repeatedly attempted to make the Plaintiffs and their counsel appear to the jury to be intentionally violating his orders while excusing all sorts of stonewall tactics and misconduct by the Defendants and their attorneys. In early November, 1976, the Plaintiffs recited a stipulation entered into on an earlier date by all parties concerning weapons

carried on the raid by the Defendants. [Tr.19059-69] With the careful manipulation of the Defendants, the Court told the jury that the Plaintiffs had willfully and intentionally misstated the stipulation,and allowed Defense counsel to misstate the stipulation to the jury. [Tr.19766-74, 78] See Part Five, III (infra). He accused Mr. Haas of violating his order when he did not hear the Court's request to indicate for the Record the position that the Defendant was in. [Tr.33878-86, 33888-97] He would also tell counsel that he "knew better than that" [Tr.34058] and allow Defense counsel to tell the jury that the Plaintiffs' counsel was deliberately disobeying orders of the Court.* He would chastise Plaintiffs' counsel for interrupting,** and when Plaintiffs' counsel would press objections, he would accuse them of attempting to keep the witness from testifying.*** He repeatedly struck Plaintiffs' arguments and questions in front of the jury. He incessantly characterized Plaintiffs' questions as repetitious,**** far afield, harmless, or wasting time --and constantly blamed the Plaintiffs for the length of the trial.***** He threatened to terminate, or did terminate examination of witnesses, including the cross-examination of

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* See: [Tr.25112-21] where identifying a trial transcript --which the jury had seen throughout trial-- became a "capital offense," as did asking leading questions of an F.B.I. agent. [Tr.27791] See, also, Tr.21810-18, 25419, 36372-3, 25739-40, 14252, 18773, 24936-41, 5223-6, 34392, 27951, 32475.

** Chastisement for interrupting, like so many other admonishments by the Court, was used selectively, and almost always against Plaintiffs. Mr. Taylor bore the brunt of this treatment. See, ex., Tr.27894-5, 5169, 7555-6, 8519-20, 27686, 8660, 13325, 20604-9, 30837, 30840, 34501, 9231, 33337.

*** See, ex., Tr.37708, 17724-6, 16137, 16203-5, 16261, 36739-40, 10679-85 (outside jury's presence.) Compare with Defendants' constant objections and Court's response (infra).

**** See, ex., Tr.27887-9, 7964-5, 22905, 33965-6, 5621, 25403, 5895, 5108.

***** See, ex., Tr.25146-7, 25164, 8757, 20582, 33154, 33159, 32918-21, 10201, 10207, 10241, 10250, 10269-70, 33927, 34025, 33198-220, 33274-5, 33321-2, 33379-80, 34855, 22069, 22350, 22393, 22835-6, 22956, 23061-4, 9824, 10243, 27352, 27444, 27601, 7955, 27773-4, 8597.

key Defendants, based on impatience, arbitrariness, or goading by the Defendants.* He would bring the jury in during the middle of Plaintiffs' arguments, or while he was shouting at the Plaintiffs.** He would refuse to allow the Plaintiffs to be heard, oftentimes where his rulings needed to be clarified or where such hearing would have prevented a blow-up in front of the jury.*** He would pound his fist, shake his finger, shout and scream and then strike Plaintiffs' attempts to place the shouting on the record, or say that it was justified by Plaintiffs' conduct.**** He would tell the Plaintiffs to "shut up and sit down," make disparaging remarks to them, or smile or smirk at their arguments.*****

The Court used the weapon of contempt as a method of further prejudicing the jury against the Plaintiffs. He held Mr. Taylor in contempt in front of the jury when he rose to protest the Court's charge that the Plaintiffs were stalling. [Tr.8610-11] Although the contempt was later rescinded, the jury was not even informed.****** After Mr. Taylor was again held in contempt for al-

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* See, ex., Tr.33453-8, 35482, 32918-21, 34760, 33380, 14348, 27860, 22858 (voir dire).

** See, ex., Tr.14258, 34052-4, 26392-3, 32274, 33300, 33916-7, 33512, 35480-1, 22806, 35458, 34434, 23285-9, 21734-40, 21680-3, 33879, 35512, 24564, 14343, 27379, 31373-8.

*** See, ex., 28001-2, 20597, 11230-1, 33165-7, 35445, 33461-3, 9821, 16266, 20087-98, 20134-42, 34227, 25232-3, 8633, 22796, 20579-81, 24933-4, 25239, 32472-3, 33886, 35521, 32037-44.

**** The Court shouted repeatedly throughout trial, but counsel did not summon the requisite courage to put it on the record until late in the trial. But transcriptions such as "Bring the jury, bring the jury," "Objection sustained, objection sustained," and "Sit down, shut up" are good verbal indicators of his shouting. See, ex., 35218, 33455, 5072-6, 21810-18, 8582, 8637, 35825, 34629-31, 36740, 35740, 35631, 35780, 22282, 32907, 35631.

***** See, ex., Tr.11231, 25453, 33888-911, 19772-4, 33878, 22721-3, 24936-41, 11252-4, 32475, 34788-90, 32146, 16261, 16203-5. Also, outside jury's presence: 7457-60, 35209-10, 11252-4, 24242, 235 87-602, 27690, 9221-2, 8644-5, 32146, 32164, 34790, 35207-13, 35364-5, 33899.

****** The Court did rescind the fine in front of the jury.

legedly breaking a water pitcher, the Court took steps to ensure that the jury learned of it, although it did not happen in the jury's presence.* He refused to recess so that the pitcher could be cleaned up, and paraded the jury through the broken glass to the jury box. He then granted a recess so that a photographe could take pictures of the pitcher and directed the Marshal to give the pictures to the press. [Tr.20023-32, 20070-82] The photos appeared on the 10:00 news and were seen by at least three jurors. [Tr.20087-98] He also held Mr. Haas in contempt in front of the jury, and repeatedly threatened contempt in order to discourage Plaintiffs' right to be heard and to make a record.

G. THE COURT ALLOWED DEFENSE COUNSEL FREE REIGN IN THE COURTROOM

In sharp contrast to this treatment, Defendants' lawyers** were allowed almost free reign in the Courtroom. Repeated objections which often amounted to little more than harassment were permitted, and when challenged, the Court often told the jury that Defense objections was their right and duty.***

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* See Contempt, Part Five, III, infra.

** When viewing the conduct of these counsel, it must be remembered that they were all purportedly acting as paid public officials, and therefore subject to a high standard of conduct.

*** See, ex., PIPER's testimony generally; HANRAHAN's, MITCHELL's, JONES' and DAVIS' testimony. See, also, Tr.33335-45, 21784-801, 3732, 34691-709, 5311-18. When Plaintiffs protested, the court ignored them, Tr.6885, and noted the Defendants had every right to object, Tr.4803, 27929, 34731, 33326-7. Contrast closing argument where Plaintiffs objected several times to Defendants' arguing material that was not in evidence, and the Court replied that the jury had heard the evidence and should decide. Tr.36569-70, 36614, 36713-4; but when Defendants contested Plaintiffs' argument, the Court gave the jury an erroneous set of facts supporting Defendants' objection, Tr.36497-99. When Defendants referred to a document not in evidence the Court told the jury to decide, Tr.36714; when Plaintiffs referred to a picture not admitted [PL#220] he told the jury Plaintiffs knew it had not been admitted into evidence. On another occasion, during closing argument, the Court told the jury that an exhibit being used by Plaintiffs that was admitted on the record [D.S.#15] had not been admitted --in the face of the record being read to the Court. Tr.36767-8, 36771-4.

The Defendants would constantly interrupt Plaintiffs' counsel and their witnesses, with no response from the Court.* The Court allowed Defense counsel to make comments on evidence not in the record, oftentimes comments which were highly prejudicial.** He would seize upon pretexts to allow defense counsel to make prejudicial comments or objections to the jury, which included allowing Mr. Coghlan a rejoinder after completion of closing argument in which he told of his former police partner dying in his arms. [Tr.36773-4, 36779-81] He never disparaged Defendants' theories or testimony to the jury --no matter how bereft they were of physical evidence to support them.*** The Defendants were constantly requesting to be heard, and this request was almost without exception honored.**** Defense counsel would oftentimes argue after a ruling, and were never chastised for it, nor did the judge order the jury brought out in the middle of their arguments.***** He countenanced prompting of Defense wit-

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* See ex., Tr.5701, 25704, 3942, 3950, 4890-3, 4941-4, 4951, 4976, 5311-8, 24546-7, 22075-6, 35467, 3904, 25531, 25610, 35467, 5906, 3784, 4125, 4156, 4166, 4219, 4253, 4326, 4917, 5102, 5178, 5232, 11155, 32405, 3263, 30968-72, 24007, 35167, 35204, 5354, 5358, 5369.

** See, ex. (not in evidence), 27894-5, 4927, 5339, 5380, 6993, 8498, 19955-64, 21975, 23148-9, 7858, 28809. (Prejudicial objection); 24942, 9506-8, 11408, 22531, 23077, 33939-41, 25576, 5228. Compare with the Court's and Defense counsel's repeated charges of intentional conduct by Plaintiffs' counsel, at the slightest deviation from what Defense counsel said was proper. See, ex., Tr.34019-20.

*** The Court allowed examination ad nauseum about bullet trajectories that went out open doors [see, Alan Testimony], and repeatedly protected Defendant raiders from challenge to their stories that up to 10 shots were fired by Plaintiffs --testimony belied by the physical evidence.

**** Since the Court did not hold sidebars, the jury was sent out of the courtroom each time argument was heard. 25% of the jury's time must have been spent this way; The vast majority of time at Defendants' request. Plaintiffs could find only 3 occasions where Defendants' request was not honored. Compare with repeated refusals of Plaintiffs' requests to be heard outside the jury's presence.

***** See, ex., Tr.3724, 4941-4, 4957, 4976, 27062, 23072, 24546-7, 24013-4.

nesses.* Personal insults of Plaintiffs' counsel were made in front of the jury, and the Court sanctioned, if not encouraged, vicious personal attacks on Plaintiffs' counsel, which included repeated references to homosexuality, name calling, as well as "Red baiting," and baiting with racial overtones, during arguments.** He permitted frequent accusations of partiality by the Defendants, including their favorite tactic of intimidation, and explained his tolerance of their shouting by stating that the Defendants never accused him of cover-up.*** In short, he had different rules for the Defendants than for the Plaintiffs. His rules and rulings were ever shifting, and were used selectively and punitively against the Plaintiffs to further discredit them in front of the jury.****

If no other grounds existed in the record, the trial court's treatment of Plaintiffs' counsel alone requires reversal. See, United States v. Dellinger, supra; Laney v. American Airlines, Inc., 295 F.2d 723 (6th Cir. 1961); Gibson v. Erie Lackawanna R.R.Co., 378 F.2d 476 (6th Cir. 1967); Sprinkle v. Davis, 111 F.2d 295 (4th Cir. 1940). The pervasive antagonism towards Plaintiffs'

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* See, ex., Tr.27239-48, 27887, 11121, 21764. Compare, Tr.20604-9.

** See, ex., Tr.34538-9, 33939-41, 25576, 14252, 27791, 25419, 25036-41, 5572, 27595, 24940, 25610-14, 25739-40. See, also, outside of jury's presence, (Gay baiting:) Tr.32717-37, 35082-5, 34791, 34629-31, 35183-4, 33790-3; (Red baiting:) Tr.30840, 33504, 33498-503; (Gutless:) Tr.14045-6, 35202. See also, Tr.4202, 25610, 35815, 18710, 27595, 35816, 34518, 34471, 32018-22. The Court would, almost without exception, refuse to strike these comments or censure Defense counsel, but rather would tell Plaintiffs their requests to censure were "tripe;" that the offensiveness was in their minds, or that they "started it." See, ex., Tr.32722-3, 35211, 34639-40, 32029, 34303-7, 27894-5, 7858, 23077, 25112-20.

*** See, ex. (outside jury's presence), Tr.24906-914, 12192-200, 13252-66, 23082-3, 16316-321, 19596-9, 10135-6, 30698, 35607-10, 35740, 22196-7, 23285-8, 11252-55, 23392-6, 19771, 28228-35.

**** For a prime example, see the Court's treatment of "Did you learn," or "Are you aware" questions; permitting them in many circumstances, but not in others, then angrily taking Plaintiffs' counsel to task for asking them. See, ex., Tr.27839, 25430-50, 7041, 4985, 25778. Compare: Tr.24990-9, 32907,

counsel, exhibited in the Court's conduct throughout, resulted in an 18-month proceeding which may have had the trappings of a trial, but which was not a trial at all. Much less outrageous behavior from the bench has been held to weigh "the scales of justice" against a party, United States v. Levi, 177 F.2d 833, 837 (7th Cir. 1949), precluding "any possiblity of a fair trial," United States v. Scott, 257 F.2d 374, 377 (7th Cir. 1958).

The prejudice suffered by Plaintiffs in the eyes of the jury due to the Court's conduct is obvious.* Less obvious, though more odious, however, was the

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* While an appellate court should be loath to read too much into the cold black and white of a printed record, it cannot disregard numerous remarks from the bench of a nature to belittle and humiliate counsel in the eyes of the jury. United States v. Ah Kee Eng, 241 F.2d 157, 161 (2 Cir. 1957).

In People v. Wilson, 174 N.W.2d 914, 916 (Mich. 1969) the Court reversed because the judge had disciplined counsel often before the jury saying: "Trial judges who berate, scold and demean a lawyer so as to hold him up to contempt in the eyes of the jury, destroy that balance of judicial impartiality necessary to a fair hearing.

. . . Considered as a whole, they [remarks to defense counsel] appear to fall into an undesirable pattern which might have had the effect of causing the jury to consider the plaintiff's case other than on the merits." Cromling v. Pittsburgh and Lake Erie R.R.Co., 327 F.2d 142, 151, 152 (3 Cir. 1963).

. . .it is incumbent on the judge to conduct himself impartially and without the obvious indication of continual agitation and hostility toward counsel for either side . . . the judge's persistent and repeated interruptions of defense counsel during the trial and during counsel's summation with sharp, critical comments, undoubtedly tended to prejudice the defendant before the jury and deprive her of a fair trial. United States v. Cassiagnol, 420 F.2d 868, 879 (4 Cir. 1970).

Apparently determined to expedite the trial and avoid erroneous reference to the inadmissible matter by keeping a tight rein on counsel . . . the Court defeated its purpose by early embroilment with counsel. The judge's repeated recriminations and displays of temper towards defense counsel could not have helped but prejudice the jury . . . If defense counsel act improperly they should be dealt with by sharp reprimand outside of the hearing of the jury . . . . United States v. Persico, 305 F.2d 534, 537, 540 (2 Cir. 1962).

intended effect of the Court's conduct on counsel themselves, and on the presentation of Plaintiffs' case. Constant interruption from the Bench,* and frivolous objections from the Defense counsel (encouraged by the Court's obvious attitudes) diluted the strength of Plaintiffs' evidence. The atmosphere of intimidation** generated from the bench made an effective presentation of the evidence against Defendants difficult, if not impossible. The Court's arbitrary and ever-shifting rules made cross-examination of Defendants a perilous task,

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* Even if there is a basis for some criticism of over partisanship of counsel, this does not justify unwanted and unnecessary continuous interruptions," Bursten v. United States, 395 F.2d 976, 983 (5 Cir. 1968).

** Compare the Supreme Court's discussion of the trial atmosphere in Offutt with the record presently before this Court:

> Almost from the outset, a clash between the presiding judge and petitioner became manifest, which, it is fair to say, colored the course of the trial . . . and with increasing personal overtones . . . these interchanges between court and counsel were marked by expressions and revealed an attitude which hardly reflected the restraints of conventional judicial demeanor. . . . counsel must be protected in the right of an accused to "fearless, vigorous and effective" advocacy, no matter how unpopular the cause in which it is employed . . . The power thus entrusted to a judge is wholly unrelated to his personal sensibilities, be they tender or rugged. But judges also are human, and may, in a human way, quite unwittingly identify offense to self with obstruction to law . . . the judge should not himself give vent to personal spleen or respond to a personal grievance . . . Plainly the Court of Appeals thought there was an infusion of personal animosity . . . though under "provocation" which it concluded "demonstrated a bias and lack of impartiality." The record discloses not a rare flareup, not a show of evanescent irritation--a modicum of quick temper that must be allowed even judges. The record is persuasive that instead of representing the impersonal authority of law, the trial judge permitted himself to become personally embroiled with the petitioner. There was an intermittently continuous wrangle on an unedifying level between the two. His behavior precluded that atmosphere of austerity which should especially dominate a criminal trial and which is indispensable for an appropriate sense of responsibility on the part of court, counsel and jury.
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> Offutt v. United States, 348 U.S. 11, 12-15 (1954).

with Summary Contempt lurking behind each question.* Merely rising to object was fraught with danger and likely to evoke a strong rebuke from the Court. Plaintiffs' counsel were confronted with a hostile,** powerful adversary in the District Court; the damage inflicted on Plaintiffs as a result of the intimidation and belittlement of Plaintiffs' counsel by the District Court of itself requires reversal.

H. THE APRIL 15, 1977, DIRECTED VERDICTS: THE COURT AGAIN ENCOURAGED PREJUDICIAL PUBLICITY AGAINST THE PLAINTIFFS

The Court's methods in directing the verdicts against 21 Defendants on April 15th further prejudiced the jury. Judge Perry, over the strong objection of the Plaintiffs, gave the Plaintiffs one week (including Easter weekend) to answer over 300 pages of motions for directed verdict, filed by the Defendants.*** The Court set this short date as punishment because the Plaintiffs had suggested that the Defendants wanted a quick determination because of the date of the Mayoral Primary, which was April 19th. [Tr.31618-32]**** The Court dismissed the jury for the week of his verdict [Tr.31808] and did not call them back before the decision to insulate them from the publicity which he

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* The threat of contempt not only tended to belittle the lawyer in the eyes of the jury, but also to unnerve him and throw him off balance so that he could not devote his best talents to the defense of his client. United States v. Kelley, 314 F.2d 461, 463 (6 Cir. 1963).

** An "extremely hostile attitude" has been shown by much milder behavior than here.

> Examination of the record shows an extremely hostile attitude toward the defendants and their counsel by the trial judge . . . The judge then said: [to defense counsel] "We don't want a speech from you. Your motion is denied." United States v. Koenig, 300 F.2d 377, 380 (6 Cir. 1962).

*** The Defendants had at least a month to work on these motions because testimony was suspended for Plaintiffs to present prior testimony of the Defendants in a long hearing which consumed all of the Plaintiffs' energy but little of the Defendants'.

**** Defendant HANRAHAN was a candidate for this office.

knew would ensue from his decision. He did not even wait until they returned the next Monday, when he could have instructed them concerning publicity, before issuing the order.* The dismissal gained front page coverage, and the prejudicial publicity to the Plaintiffs was exacerbated by the Court's entry of Costs against the Plaintiffs and statements by Defendant HANRAHAN that the Plaintiffs' lawyers had suppressed evidence. Each and every juror heard the publicity and several thought that the trial was over, and everyone had been acquitted. [Tr. 32187-93] Nonetheless, the Court denied a mistrial, avoided a meaningful examination of the jurors,** and neglected to give the jury any explanation of his ruling,*** either to alleviate the jurors' confusion over their status, or to attempt to cure the prejudice that had been created by his ruling. Such flagrant prejudicial publicity encouraged by the Court was proper grounds for a mistrial, and to deny it was error. See: U.S. V. Marshall, 360 U.S. 310 (1959); U.S. v. Accardo, 298 F.2d 133 (7th Cir. 1962); Coppidge v. U.S., 272 F.2d 594 (D.C.Cir. 1959), Carter v. U.S., 252 F.2d 608 (D.C.Cir. 1957).

I. THE COURT'S EX PARTE CONTACT WITH JUROR PELZ

The Court, on at least one occasion, had contact with a juror which raised serious questions. One afternoon, late in the trial, Plaintiffs' counsel went into the Court's outer chambers where he chanced upon Juror Laura Pelz, later to become foreperson of the jury. He made inquiry of the Court, and the Court stated that the juror had asked the judge to help a friend get a job in

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* He issued the order on the Friday afternoon before they returned on Monday.

** Early in the trial, when there was publicity about the government's suppression of evidence, one juror, when asked if she had read any publicity, produced a clipping and said she'd be a liar if she said she did not read it. [Tr. 7324-6] The Court made no effort to probe her on this, and examined the jury no further on this issue for over a month.

*** See, Plaintiffs' Proposed Instruction No. 76.

the legal profession, and the Court had interviewed the friend, whose resume he produced. Further inquiry was prevented by Defense counsel, and although the Court promised to inform all counsel of prior and future conduct with any juror, no further information was provided either on this or any other incident. [Tr. 34420-34, 476-77, 472-4]

J. THE COURT'S INSTRUCTIONS MISSTATED THE LAW AND FURTHER PREJUDICED PLAINTIFFS' CASE BEFORE THE JURY

Both sides submitted proposed jury instructions. From these, along with several of its own, the Court selected those to be read to the jury. The resultant jury charge was wrongfully and prejudicially one-sided in favor of the defendants. It omitted several of plaintiffs' claims; it misstated the law; it was unduly lengthy and confusing; it contributed to the failure of the jury to return verdicts for the plaintiffs. Both in specific instances, and as a whole, the court's charge to the jury revealed its bias in favor of the defendants, and constituted reversible error.

The trial court refused to instruct the jury on Plaintiffs' claimed violations of the First, Ninth and Thirteenth Amendments (P. #12, 15A modified, 25, 26, 27, 42, 43)*, despite overwhelming proof to support such claims. [See Parts One and Two (Supra)]

While the trial court did instruct the jury that plaintiffs' claimed violations of the Fourth Amendment (P. 15A modified), and read that Amendment to the jury (P. 28), it refused to instruct the jury on the necessary findings to be made to conclude that the search of the apartment was unreasonable in the manner in which it was executed, or in its scope. (P. 27B). The trial court also refused to instruct the jury on plaintiffs' claimed Fourth Amendment violation that the search warrant was wrongfully and illegally obtained. (P.33,34). On the contrary, the trial court allowed defendants' instruction which stated that information provided by an undisclosed informant provides sufficient probable cause for the issuance of a search warrant, without any mention in that instruction of the requirement of that informant's reliability (D.48);** and which defined "probable cause" according to the lesser standard found in automobile search cases (D.31).

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* "P" denotes Plaintiffs' Instructions.

** "D" denotes Defendants' Instructions.

The court refused plaintiff's proposed instruction regarding the duty of a police officer to identify his authority and purpose when serving a search warrant (P. 31), taken verbatim from an instruction previously used in this district in the case of Monroe v. Pape, 221 F. Supp. 633 647 (N.D. Ill. 1963).

The court did, however, allow defendants' instructions which set forth under what circumstances demand for admittance is not required (D.49), and which stated that "failure of the occupants to respond to the officer's demand within a reasonable time is tantamount to refusal" (D.51), the latter instructic helpfully informing the fact finders that "a reasonable time is ordinarily very brief" (D. 51).

Nailing the lid on the coffin of plaintiffs' Fourth Amendment claims, the court instructed the jury that the search warrant in this case had never been found to be invalid by any court (D.53).*

While the trial court informed the jury that plaintiffs' claimed violations of equal protection of the laws (P. 12, 15A modified), and read the Fourteenth Amendment to the jury (P. 15, D. 25), it refused to give the jury an equal protection "elements" instruction (P.45).

Although the evidence clearly supported it, the trial court refused to give the jury an instruction on use of force in defense of dwelling (P. 32), and on obstruction of an investigation as evidence of guilty conscience (P.64). See, United States v. Karigiannis, 430 F. 2d 148 (7th Cir. 1970); Nafie v. United States, 304 F.2d 810 (8th Cir. 1972).

The trial court refused plaintiffs' offered instruction**on deadly force, including the firing of a firearm in the direction of an arrestee (taken verbatim from IPI Criminal No. 24.15). Instead, the court allowed defendants' modification of IPI 24.15, which prejudicially and conclusively couched such force in terms of when it can be "legally used" (D. 74).

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* The Court failed to inform the jury that the search warrant had not been challenged in any other court and that he had resisted any challenge in his Court, leaving the clear implication with the jury that the warrant's validity had been previously established.

** Plaintiffs' Proposed Instruction No. 80, orally offered during arguments on instructions. [36287, 36291].

Showing its continual and pervasive double standard, the trial court refused to instruct the jury on plaintiffs' claims of defendants' negligence "in particulars" (P. 41); the court did, however, instruct the jury on defendants' claims of plaintiffs' contributory negligence "in particulars" (D. 86).

In fact, the trial court allowed five separate instructions which spoke to the issue of plaintiffs' contributory negligence (D.79B, 83, 84, 86, and 97), one of which placed the burden of proof on the question on plaintiffs (D. 79B, p. 7; 36800), and one of which placed the burden of proof on defendants (D.84; 36837-38); two of which limited that defense to plaintiffs' negligence count (d. 79B, 84, 36800, 36838), and one of which did not (D.97).*

The trial court instructed the jury on contributory negligence (though somewhat confusedly), despite the fact that no evidence supported that proposition, and despite the law that such a defense is not properly available in a civil rights action. See, Lukor v. Nelson, 341 F. Supp. 111, 118-119 (N.D. Ill. 1972).** Similarly the trial court instructed the jury on "assumption of risk"

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* While the trial court had indicated it would modify D. 97 to add the words "so far as their charges of negligence are concerned," it failed to read that modification to the jury [36835].

** See, also those cases which support the proposition that laws which are inconsistent with the broad remedial purposes of the Civil Rights Acts are inapplicable in such cases, in order to fully effectuate a remedy for constitutional violations. E.g., Brazier v. Cherry, 293 F.2d 401 (CA 5 1961); Basista v. Weir, 340 F. 2d 74 (CA 3 1965); Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 90 S.Ct. 400, 406 (1969); Sostre v. Rockefeller, 312 F. Supp. 863,887, (SDNY 1970), rev'd in part, modified in part, aff'd in part, sub nom, Sostre v. McGinnis, 442 F. 2d 178 (CA 2 1071), cert denied, Oswald v. Sostre, 405 U.S. 978 (1972); Shaw v. Garrison, 545 F. 2d 980 (CA 5 1977), cert granted____ U.S. ____(1977).

by plaintiffs (D. 85), despite the absolute absurdity and outrageous implications of the application of that doctrine to the facts of this case.*

The trial court instructed the jury on such irrelevancies as the Illinois statute on Unlawful Sale of Firearms (D. 64), disorderly conduct (D. 67) assault (D.68), aggravated assault (D. 69), and mob action (D.70), among others, obviously designed to prejudice plaintiffs in the minds of the jurors.

The trial court gave three separate instructions on the defense of good faith asserted by the defendants, described, in ascendancy, as a "defense" (D.28), a "defense in an action under the Civil Rights Act" (D.29), and "an absolute defense in any action under the Civil Rights Act." (D.30). (emphasis added).

Defendants' instruction 79B, given by the court listed as the tenth "essential element" which the plaintiffs were required to prove, by proponderance of the evidence, in order to prove his or her claim, "that each defendant knew that there was no probable cause to have a search warrant issued." That instruction, taken together with the instruction that information provided by an undisclosed informant, provides sufficient probable cause (D. 48), and the instruction noting that no court had ever found the search warrant invalid (D. 53), virtually required any juror, who understood the instructions, to return with a verdict for the defendants on all counts.

The instruction taken as a whole, are also incomprehensible.** As illustrated above, they are internally inconsistent. They take up 95 pages in the transcript. [Tr.36785-36880] Their undue length and complexity alone constitute reversible error. See, Hoffman v. Regling,258 NS. 347, 351 (1935); Roshel v. Litchfield and M. Ry,

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* See Pierson v. Ray, 87 S. Ct. 1213, 1220 (1967), in which the Supreme Court reversed the Fifth Circuit's finding that the principle of volenti not fit injuria was applicable to a claim asserted against policemen for civil rights violations. See, also, Suarez v. TWA, 498 F. 2d 612 (CA 7 1974), which recognizes that under Illinois law, the doctrine of assumption of risk is limited to master-servant relationships.

** The tial court read many of the same instructions twice: the function of the jury [P. 1, 2; D. 1; Tr. 36785, 36788]; Ten separate lawsuits [P. 5; D. 79B,

(continued next page)

112 SW. 2d 876 (1938); Prince v. K.C. So. Ry., 214 SW. 2d 707 (1948); Johnson v. M.K.T. RR., 355 SW. 2d. 32 (1962); See, generally 88 C.J.S. Trial § 355.

The charge to the jury was, however, more than mere muddle.* It was muddle which evidenced a bias by the trial court, in favor of the defendants and against the plaintiffs and their cause of action.

Normally, the placement of any one instruction within a charge to the jury would have little significance. In this case, however, the placement of plaintiffs' punitive damages instruction illustrates the distaste which the Court felt towards plaintiffs' case. The trial court had ruled that punitive damages were not recoverable, as a matter of law, in an action brought pursuant to 42 USC §1983. The court was later forced to reverse its ruling, and recognized that it was required to instruct the jury on punitive damages. Where the court placed that instruction is subtly revealing. All of the instructions on damages, with the exception of punitives, were given in sequence, from pages 36860 to 36876. The punitive damages instruction, however, is given at pages 36823-26, a full 34 pages away, tucked neatly between the definition of assault [D. 68; Tr. 36823] and the definition of aggravated assault [D. 69; Tr. 36826].

K. THE COURT'S DISMISSAL OF THE CASE AGAINST THE SEVEN RAIDERS

After the Jury retired to deliberate, the Court continued to manipulate the situation in order to get a jury verdict for the Defendants. Deliberations started on Friday, and continued over the weekend. The jury first reported to

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Tr. 36712, 36793]; Burden of proof in civil cases [P.5; D. 13; Tr. 36802, 36803]; Definition of the 14th Amendment [P. 15; D. 25; Tr. 36804, 36805]; Under color of law [P. 20; D. 24; Tr. 36808, 36807]; Definition of due process [P. 37; D. 26; Tr. 36813, 36812]; Definition of probable cause [D.31, D. 35A; Tr. 36791, 36827]; Proximate cause [P.22; D. 80; Tr.36791, 36834]; espert witness [P. 58; D. 20; Tr. 36848, 36850]; Witnesses, credibility [P. 52; D. 16, 17; Tr. 36790, 36853]; Definition, knowingly [P. 50, D. 10; Tr.36842, 36855]; No damages unless injury proximately caused [D.91, 82; Tr. 36872-3, 36874].

* In a long and complex trial, requiring numerous instructions, some mistakes are inevitable. There is no excuse, however, for fourteen obvious duplications. Nor is there any excuse for permitting the alternate to retire with the rest of the jurors for deliberation, which the Court did, until corrected by the Plaintiffs. [36886,7].

him that they were hopelessly deadlocked on Saturday, but the Court did not so inform counsel. He received several communications from the jury during the weekend, reiterating that they were deadlocked, but the first time that he informed Plaintiff's counsel was on Monday morning. Certain of the Plaintiff's counsel, acutely aware of the grossly unfair trial they had been afforded, moved for a mistrial.

The Court, by now aware that the jury would not do his bidding, seized upon this opportunity and declared the jury hung. Then, with a flourish, he followed the suggestion of defense counsel and directed verdicts for the remaining Defendants.*

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* [See Tr. 6/20/77]

II. THE COURT'S DEEP-SET PREJUDICE MANDATED RECUSAL AND THE FAILURE TO RECUSE DEMANDS REVERSAL, AND REASSIGNMENT UPON RETRIAL

A. PRETRIAL PREJUDICE

The Court has held a deep set bias against the Plaintiffs since the filing of this lawsuit. He dismissed HAMPTON and other Defendants who assisted in the planning and coverup of the raid and struck much of the Complaint as "scandalous and irrelevant"--including the claims that the Plaintiffs were punished "because of their race and political beliefs." Hampton v. City of Chicago 339 F.Supp 695 (N.D. Ill. 1971). When this Court reversed his dismissal, the Plaintiffs sought reassignment to another judge, forseeing a "long and arduous" discovery process.

Unfortunately, the case was returned to Perry, who continued his unwavering course to impose his political and racial biases to mock the evidence and to conceal the massive government misconduct which is such an important part of the post-1972 history of this case. His conduct in the suppression of FBI documents, even in the teeth of the revelations of the Senate Select Committee on Intelligence, as well as his conduct in protecting GROTH from having to divulge his "purported" informant is well documented in the section on Discovery (supra).

Perry sanctioned the Defendant's obstructionism during the discovery process. He refused to compel the State Defendants when they did not comply with discovery demands, and allowed a deposition process which allowed the State Defendants to control the scope of discovery. When the Plaintiffs attempted to stop the Defendants from using obstructionist tactics at depositions, the Court responded on two occasions by rescinding his order which permitted depositions by tape. He treated Plaintiffs' counsel with the same contempt and lack of respect as he later did at trial.* The State Defendants'

*For example, see 5/8/75, P. 60, where he said to Mr. Taylor, "You don't know anything, do you counsel?" See also 5/6/75, 10/20/75.

obstructionism permitted by the Court apexed with the deposition of HANRAHAN which is a living testament to the developed art of stonewall--a performance that could only be rivaled by the performance of the F.B.I. Defendants on the stand.*

B. ACCESS TO TRIAL TRANSCRIPTS

His prejudice and desire to have the Plaintiffs' claims defeated is further illustrated through his actions restricting Plaintiffs' access to official transcripts and imposing undue financial burdens upon them. During pretrial, the Plaintiffs, because of minimal resources, sought an order to take depositions by tape. The Court granted this motion, but used the rescinding of this order as a weapon of punishment against the Plaintiffs on two occasions--both being times when they had raised the obstructionism of the State Defendants during the discovery [Pretrial Tr.5/6/75, 6/5/75]. At the beginning of trial, the Plaintiffs moved for permission to xerox the Court's (or the Defendants') copy of the daily transcript--or, alternatively, to have furnished them a copy of the transcript for the price of the xeroxing paper.** The Court denied this motion, saying that he had no jurisdiction to enter such an order [Tr.2823-46]. Court Reporter Claude Youker agreed to provide the Plaintiffs with a copy of the transcript, with the majority of the fee to be paid at the end of trial, if the Plaintiffs won. This agreement was terminated by Youker in late February 1976, some two weeks after they began to receive the transcripts. The Court allowed the Plaintiffs access to his copy of the transcripts, in Court, when there was a controversy concerning testimony. During the spring of 1976, he allowed volunteers for the Plaintiffs to abstract the transcripts in Court during Court hours. *** In June however, the Defendants intimidated the Court into

* Plaintiffs urge this court to peruse HANRAHAN's entire deposition, or to at least share Plaintiffs' odyssey in search for the location of the S.A.O. file room at 26th and California. HANRAHAN dep., p. 214-224. See, also, p. 162 169, 187, 205-7. See, also, CARMODY dep.[Tr.6/5/75, p. 18-28] and MULCHRONE and Conlisk depositions.

** Motion to Provide Plaintiffs With Daily Transcripts, filed 1/20/76/

*** Because of the document unearthings, court was not in session much of the Spring, and the Court allowed this abstracting to go on during court hours when court was not in session.

removing that "privilege," in essence telling him that he was unfair to their clients, and that his copy was provided by them.* The Court then ordered that the transcripts would only be available when a controversy arose. [Tr. 10993-11010]. In November, the Plaintiffs returned to Claude Youker, and again attempted to get a reduced rate of payment for transcripts. Youker took them to a room off of his offices because of fear "of being bugged." He then told Plaintiffs' counsel that he could not give them daily copy because prior to the trial, Coghlan had gotten him to agree that defense counsel would pay $3.00 each per page for copy, with the understanding that the Plaintiffs would also have to pay the same amount. He also stated that in February he had stopped providing transcripts to the Plaintiffs, because Coghlan had threatened to stop purchasing the transcripts if he continued to supply the transcripts to the Plaintiffs. [Motion and Affidavit filed 11/12/76 Appendix B.]

Armed with this admission by Youker and the Rules of the Judicial Conference,**the Plaintiffs moved for a hearing, mistrial, and sanctions against the Defendants. The Defendants filed responses, in which the State Defendants claimed to be purchasing "hourly copy"*** at $3.00 per page per copy, and to be purchasing two copies.**** The Federal Defendants opted out

*Neither the Defendants nor their Counsel have ever used anything but County Board or City Council Funds to pay the inflated transcript rate.

**The Rules clearly set the maximum price for daily copy at $2.50 per page for the first copy with the cost of multiple copies to be divided among the parties.

***Interestingly enough, the State Defendants received their "hourly copy" each day at the same time the Federal Defendants received their "daily copy."

****Messrs. Coghlan and Volini filed an affidavit in which they denied only that they "conspired" to fix the price of transcripts.

of the deal (although Youker had placed them in it) and produced records of purchasing two copies of the transcripts--one at $2.50 per page, the second at .25 per page. Youker filed an affidavit- which Plaintiffs first learned of when they read the subsequent order of the Court- which affirmed the details of the deal, denying only that there was a conspiracy or overt coercion by Mr. Coghlan [Affidavit of Claude Youker]. The Court refused to hold a hearing,* denied a mistrial, and issued an order which approved the inflated price Defendants paid for their transcripts out of taxpayers' money.** [Order of 12/1/76]

The transcripts, like the tapes, were a weapon in the hands of both the Defendants and the Judge. Questioning about prior trial testimony was constantly interrupted by defense counsel asking for page numbers when they knew the Plaintiffs had none. This inequity was heightened by the Judge's "rule" that prior testimony could not be paraphrased or characterized, but rather had to be stated verbatim. Barring access to the transcripts was used both as a punishment by the Judge, and as a way to insulate himself when the Plaintiffs wanted to show him how he was in error [see Part Five, III, (supra)] or likewise, if the Defendants objected or intimidated him about their use, he would prevent Plaintiffs' attorneys from seeing them. After the filing of the Transcript Motion in November, the Plaintiffs were again given access to a limited number of transcripts

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*He postponed the hearing on sanctions until after the trial; which, of course, has never been held.

**He ordered that Plaintiffs could have a copy of the transcript for 1/4 of the total price; i.e., $2.25 per page, clearly three times the maximum rate permitted by the Judicial Conference. Up to the present time, Federal, County, and City taxpayers have been swindled out of $250,000 in excess payments for transcripts , and the Plaintiffs were swindled out of access to the daily record at trial because of Coghlan's Volini's and Kanter's arrangement with Mr. Youker, which the Court ratified.

during Court hours, in the Courtroom, which permitted them the "luxury" of viewing them over the lunch hour and during recesses. This was again curtailed when the Defendants objected, and the Court ordered that the Plaintiffs had to inform the Court of the reason why they wanted a transcript. [Tr. 34495-504].

The disparity in resources was ratified by the Court in other ways. He appointed Messrs. Coghlan and Volini, private counsel for certain Defendants in the Hanrahan trial, as counsel in this case. [Tr. 4/25/73]. He then approved "Special State's Attorney" Coghlan's time sheets monthly, by written order [see Minute Orders, 1973-present]. Plaintiffs requested notice of these motions for approval, but the Court told them "it was none of their business." [Tr. 7/27/77]. The Court has approved the payment of $700,000.00 from the Cook County Board for Coghlan and Witkowski, of which over $500,000.00 was attorneys fees at $50.00 per hour. [See monthly motions of J. P. Coghlan]. Moreover, he has continued to approve Mr. Coghlan's fees (over $90,000.00 post trial) even though he no longer has jurisdiction over the case [See Minute Order, 11/22/77 and 12/20/77] Additionally, Mr. Volini has received approximately $500,000.00 for his services. The Court chose, however, to focus on the Plaintiffs' financial resources, the "untold thousands of dollars from unknown sources," which he repeatedly referred to in his orders [see orders 12/1/76, 8/2/77], referred to in the record [Pretrial Tr. 5/6/76], and even told the jury in a fit of anger.*

The Court in an effort to assure the Plaintiffs would not collect in any substantial sum, entered an order striking punitive damages, in the face of case law, both in the Supreme Court and this Court, which was presented to him. [Tr. 36198-204, 36058-87, 36299-304]** He then reversed himself, (after a

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* He said in the presence of the jury "...you are able to finance this whole litigation in the manner in which it has been. You cannot plead poor mouth on that. Now let's get that over with" [Tr. 7581].

** Not only had there been argument in front of him on this issue, but Plaintiff's counsel had given him a list of the pertinent cases, including; Batista v. Wier, (Supra); Spence v. Staris, 507 F. 2d 554 (7th Cir. 1974) as well as Sullivan v. Little Hunting Park, Inc., (Supra).

Mandamus was filed in this Court) after the Plaintiffs had begun their closing arguments, thereby precluding their integration of the facts around this principle.* He punished the Plaintiffs for going over his head**, and attempted to block this appeal, by assessing costs of $100,000.00 and setting a bond in a like amount which was to be a precondition for the appeal. The costs primarily consisted of the expenses of the federal Defendants in producing the documents which they wrongfully suppressed, and a portion of the transcripts paid for by the taxpayers in the "sweetheart" deal. He then, as if by fiat, proclaimed this appeal to be "frivolous" and "without merit" and denied the Plaintiffs' Petition to Proceed on Appeal in Forma Pauperis.***

C. PLAINTIFF'S EFFORTS TO RECUSE THE TRIAL COURT

The Plaintiffs have consistently sought the removal of Judge Perry, because of his obvious bias against them and their claim. After a stormy pretrial which further exposed this prejudice, the Plaintiffs moved for his recusal. They based their Motion on the averments of Plaintiff Iberia Hampton, who set forth the Court's bias and prejudice towards law enforcement and against the Plaintiffs as black people with connections to the Black Panther Party, based upon his disperate treatment of the Plaintiffs and the Defendants, and his highly irregular actions in denying discovery. The affidavit further stated that his temperament, age and attitudes made him ill-suited to a trial of such sensitivity and complexity. [See Motion for Recusal, Affidavit of Iberia Hampton, filed 10/24/75] Appendix A. When the Plaintiffs attempted to inform the Court

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* He allowed Plaintiffs 1/2 hour to argue the point, with no time to prepare [Tr. 6/16/76].

** The Court on several occasions chastized the Plaintiffs for the temerity of seeking review in this Court, and accused them of trying to "disrupt" the trial by mandamus [Tr. 35354, 5/6/75].

*** For a similar abuse of the legal concept of frivolity by Judge Perry, see Hayes v. Walker, 555 F. 2d 625 (7th Cir. 1976), aff'd ____U.S.____(11/77).

that they intended to file the recusal motion, he became enraged, threatened counsel with contempt, and denied the Motion, even before it was filed [Tr.10/20/75]. When the motion was filed, the Court reassigned the motion to the Executive Committee, after filing a "Statement of the Court" -- which, in a fashion set forth his defense to the charges of bias.* The Motion was reassigned to Judge Lynch,** who found Iberia Hampton's affidavit insufficient, and denied the motion on November 14, 1975.

In early December 1975, Judge Perry, during a discussion with Sheldon Waxman (the former U.S. Attorney who represented the Federal Defendants in the early states of discovery), told Waxman that the counterintelligence documents*** recently released by the Senate Committee weren't relevant to the Hampton case, and further that "they would never be able to prove that the FBI killed those fellas." Waxman, from the context of the conversation, clearly understood the judge to mean "Hampton and Clark." [see Waxman Affidavit and Appendix A] These comments were made at a time when Plaintiffs' Motion for Discovery and Disclosure -- based on the new revelations -- was pending before the Court.****

In late May of 1976, just as the 200 volumes of FBI documents were coming to light, the Court told Thomas Streitor, a Glen Ellyn minister, during a Memorial Day Parade that the conspiracy involving Hanrahan and the FBI was "impossible," could not be true, and there was "no earthly way to establish it." [See Appendix A] In April,1977, the Plaintiffs, having been bludgeoned by the

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* This statement cited several cases where he had ruled "favorably" for blacks and Panthers, the legal equivalent to "some of my best friends are Negro."

** The Plaintiffs asked Judge Lynch to reassign the matter because of his close ties to Mayor Daley.

*** Specifically the Jeff Fort "hit letter."

**** As mentioned earlier, the Plaintiffs had prepared a mandamus which incorporated this affidavit, but because the law prohibiting mandamus for recusal was almost absolute, in this Circuit, fearing the wrath of the Trial Court, and because this Court had rejected Plaintiffs' previous pretrial mandamus, they did not file.

Judge's prejudice for 15 long months of trial, and further astounded by his twin orders dismissing 21 Defendants and "exonerating" the Federal Defendants renewed their motion for recusal, basing it on the Waxman affidavit* and the Court's vindictive orders of April 15. The Court denied the Motion, without arguments or hearing, on the 20th [Tr. 32194]. On the 25th, however, the Court entered a memorandum order and affidavit denying the renewed recusal motion.**

As a result of reading about Mr. Waxman's affidavit in the newspapers, in April of 1977, the Reverend Mr. Streitor contacted Plaintiffs' counsel and informed them of his similar conversation of the past May with Judge Perry. The Plaintiffs then filed a "Second Renewal for Mistrial and Recusal" with Streitor's affidavit in support. The Defendants responded by filing affidavits of two other persons in the car when the statement was made -- one did not recall the conversation, and the other denied that it happened. In the affidavit, the Defendants accused the Reverend Streitor and Plaintiffs' counsel of "blatant perjury."*** On the same date, May 9th, Perry denied the Motion, finding Mr. Streitor to have made "false accusation" [Tr. 33479-80].**** He reiterated this charge from the bench the next day, stating that Streitor's affidavit was a "falsehood' and Plaintiffs' counsel know it to be so [Tr. 33509-11]. In essence, he reiterated the Defendants' charges of perjury.

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* The Plaintiffs had previously filed the Waxman affidavit in this Court on 12/29/76.

** In his affidavit, the Court admitted to the conversation with Waxman, but claimed that he had been referring to black gang members who had been killed. Waxman in a later letter filed as supplementary exhibit reaffirmed that the conversation was about the Jeff Fort hit letter and its relevance to the Hampton case.

*** Defense counsel also attacked Mr. Waxman, accusing him of violating the Cannon of Ethics in coming forward with the information concerning the Judge's bias [Tr. 35194-6], and calling for him to be prosecuted or disciplined [Tr.35194-8].

**** Plaintiffs' counsel were not in Court at the time, as they had returned to their offices to get documents for the cross examination of the witness on the stand.

Plaintiffs then filed a motion to reconsider the motion for recusal and mistrial, based upon the letter of Sheldon Waxman, the affidavit of a student of Rev. Streitor's who swore that Streitor had told her of Perry's comment the same day that Perry had said it, and upon the trial record of the Judge's bias. It also set forth that Plaintiffs' counsel had arranged to interview one of the witnesses who had contradicted Streitor's affidavit, but had arrived at the interview only to find Mr. Coghlan present, and the witness suddenly unwilling to talk.* This motion was also denied [Tr. 35384]. In the teeth of serious evidence of judicial bias, extrajudicial in nature, the Court repeatedly refused to hold an evidentiary hearing or send it to the Executive Committee for an impartial determination.

These extrajudicial comments of the Court, which showed profound political bias against the Plaintiffs are amply reinforced by his action from the bench. He used his judicial power as well as the resources and bullying of defense counsel to harass and attack the Plaintiffs when they attempted to recuse him. It was error of Judge Perry not to recuse himself in this case when not only the appearance of injustice but also injustice itself was so clearly demonstrated. [U.S. ex rel. Wilson v. Coghlan, 472 F. 2d 100 (7th Cir. 1973); U.S. v. Sciutto, 531 F. 2d 842 (7th Cir. 1976); In re: Murchison, 349 U.S. 133; U.S. v. Townsend, 478 F. 2d. 1072; U.S. v. Grinnell Corp., 384 U.S. 563; U.S. v. Brown, 539 F. 2d 467 (5th Cir. 1976).**

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* Messrs. Coghlan and Conneely, a police gang crimes investigator assigned full time as Coghlan's assistant, taped this episode, and the Plaintiffs sought the tape. The Court repeatedly refused to order them to produce it, claiming he did not have jurisdiction (he finally relented on this). The tape showed the bullying tactics of Coghlan and his police assistant with both the witnesses and Plaintiffs' counsel, all to prevent the exposure of the Judge's prejudice.

** See also Tumey v. Ohio, 273 U.S. 510; Offutt v. U.S., 348 U.S. 11; Hurd v. Leets, 152 F. 2d 121 (D.C.D.C. 1945); Knapp v. Kinsey, supra; U.S. v. Hoffa, 247 F. Supp 692; Hall v. Burket, 291 F. Supp 237 (D.C. Okla).

III. THE JUDGMENTS OF CONTEMPT AGAINST PLAINTIFF'S COUNSEL MUST BE REVERSED

The separate contempt judgments against plaintiffs' trial counsel, Haas and Taylor, are consolidated with each other as well as with the main appeal, and should first and last be viewed as a piece. The predominating aspect of both -- though they are quite different as episodes -- is the way each fits into the protracted battle between them and the Court; and, how each reflects the illicit and overbearing tactics to which Judge Perry reduced himself to maintain his bullying upper hand. As the full record copiously shows, Taylor and Haas were indeed caught in a "struggle," with the supposed arbitor, who was not simply an "activist seeking combat," but a zealous and determined partisan, aroused by a sense of mortal danger to those he regarded as the Good Guys, and determined to protect them by all means at hand.

This Court in recent years has known Judge Perry very well in this role, especially in cases where Racial Injustice and White Supremacy are the premise. He showed the same bent of mind in this case from the beginning, and sent it here five years ago on a characteristic misjudgment which he has now not simply duplicated, but deepened and set in broader scope. Truly, in every respect, the District Judge immersed himself in the effort -- to suppress the truth about these vicious murders.

There were two tactics in particular which the Court employed again and again: obstruction of the proof concerning especially sensitive parts of the case, and harassment and arbitrariness over small things, which -- usually at the instance of defense counsel and in front of the jury -- were made big. We have one contempt in each catagory. Examined on their merits, as if on appeal by themselves, it is clear each of the judgments must be reversed.

A. HAAS --FEBRUARY 22, 1977

On February 22, 1977, Edward Hanrahan was recalled to the stand after a four-day break in his testimony, during which F.B.I. agent Leonard Treviranus had testified. Treviranus had been questioned about the conversation reported in the "Deal Document" [PL #24], a memo he had written, as the F.B.I.'s "case agent" for the Grand Jury investigation, which outlined the arrangement between Hanrahan, Jerris Leonard and Marlin Johnson, whereby indictments of the raiders would be suppressed in the Grand Jury, and Hanrahan would drop the case against the survivors of the raid. (See Summary of Evidence, Section IV). The Court had deferred introduction of the document when Johnson had testified, and also blocked it with Treviranus. With Hanrahan back on the stand, Haas now attempted to probe the deal for the suppression of the indictments. [Tr. 27966.]

> Mr. Haas: Sir, were you present at a meeting with Marlin Johnson in late March or early April of 1970 in which he indicated that there would be no indictments of police officers or yourself?
>
> Mr. Hanrahan: No, sir.
>
> Q: Well now, didn't--Mr. Hanrahan, didn't you tell the Federal prosecutors on or about April 8 that you were going to drop the indictments against the occupants of the apartment?
>
> . . . . . .
>
> A: My recollection is that on the second date that I appeared before the Grand Jury I indicated that they would review the indictments that are pending and probably dismiss them.
>
> Q: You are referring to May 5th of 1970?
>
> A: I am referring to the second occasion that I appeared before the Federal Grand Jury. It was early in the year and I believe it was in May.
>
> Q: But prior to that you had entered an agreement with the Federal prosecutors to drop the charges, had you not?
>
> A: No, sir.
>
> Q: And hadn't you told them that the reason that---

[Tr.27981-82]

At this point, defendant's attorney Camillo Volini requested a hearing outside the presence of the jury. While the jury was excused, Volini asked that Haas be instructed to cease asking questions concerning the agreement and that the jury be "instructed to disregard it." Arnold Kantor, co-counsel for the defendants, asserted that Haas should be denied the opportunity to ask more questions concerning such agreements because the witness had already asserted there were none [Tr.27983]. The Court did not rule on these motions nor comment on them. He did not wait to hear from Taylor and Haas, but called the jury back and said, "The last question is stricken. You will disregard it." [Tr.27984] Haas then resumed his examination of Hanrahan:

BY MR. HAAS:

> Q: Mr. Hanrahan, do you know how it was that Leonard Treviranus knew on April 8th that the Grand Jury--
>
> MR. KANTER: Objection.
>
> THE COURT: Now, Mr. Haas --
>
> MR. HAAS: Wait a minute.
>
> THE COURT: --we just got through out of the presence of the jury. You will not go into that subject matter any further.
>
> MR. HAAS: I didn't even get to argue it. Well, Judge, the deal --
>
> THE COURT: I said you will not go into it any further.
>
> MR. HAAS: Judge, we can't cover up the cover-up.
>
> MR. WITKOWSKI: Your Honor --
>
> MR. HAAS: That is part of our complaint, that they covered up, Judge.
>
> MR. COGHLAN: If the court please --
>
> THE COURT: Mr. Haas, you are now held in contempt of court for your last remark directed to the Court, and I will prepare an order accordingly.
>
> MR. TAYLOR: May the jury be excused --
>
> THE COURT: The Court will take a recess, and we will prepare an order holding you in contempt.

MR. HAAS: All right, Judge. I think all the people who have spoken the truth have always ended up in contempt, and the cover-up goes on and on and on.

MR. TAYLOR: And Mr. Treviranus testified on Friday, Judge.

THE COURT: I will hold you in contempt and I will now turn you over to the custody --

MR. HAAS: O.K., Judge.

THE COURT: --of the U.S. Marshal for contempt, and hold you in custody until tomorrow morning at 9:00 o'clock.

MR. HAAS: All right, Judge. I would just --

MR. TAYLOR: There is a document right here that says there was --

THE COURT: Court now stands in recess. [Exit]

Haas was taken into custody by the United States Marshal and ordered held until the following morning. An order was prepared by the Court that day stating that Haas' "statements and actions in the presence of the Court are serious and that it resulted in the obstruction of the administration of justice . . . " Judge Perry did not cite any specific language, but recited "certain statements in open court in the presence of the jury as set forth in the transcript of the Court proceedings certified by the court reporter and attached hereto made a part hereof." [Tr.27987] This Court denied a motion for appeal bond, and Haas remained in jail until the next morning. The next day the Court reversed its position and heard extensive testimony about the deal, replete with long self-serving statements from Hanrahan on every point.

According to the Law, the Judgment Against Haas Was Erroneous

The use of the summary contempt sanction is restricted to a "narrowly limited category of contempts." In re Oliver, 333 U.S. 257, 275 (1947); Nye v. United States, 382 U.S. 162, 164 (1965), and Haas' case is a good example of the reason, namely, the great potential for abuse inherent in such an arbitrary power. Bloom v. Illinois, 291 U.S. 194, 202 (1968). Con-

tempt requires an actual obstruction, In re McConnell, 370 U.S. 230 (1962); Ex Parte Hudgings, 249 U.S. 378 (1919), and so it must be demonstrated that the district court was actually and materially hindered in the performance of its judicial duty. In re Dellinger (Dellinger I), 461 F.2d 389, 397 (7th Cir. 1972). Moreover, the threat of obstruction must be imminent (i.e., more than just likely). United States ex rel. Robson v. Oliver, 470 F.2d 10, 14 (7th Cir. 1972), citing In re Little, 404 U.S. 553, 555 (1972).

The circumstances underlying Haas' contempt do not present an imminent and material obstruction of justice. The trial judge ruled ambiguously without allowing Haas the right to articulate his position. In effect, Judge Perry's summary contempt finding cited Haas, not for obstruction of the proceedings, but for attempting to make argument on behalf of his clients. Thus, as a matter of law, which is very clear in this circuit, the contempt finding must be reversed.

In the Oliver case, a lawyer in closing argument impugned the capabilities of the trial judge in the presence of the jury. He stated that he thought he understood the rules of evidence until appearing in the trial judge's courtroom, and protested that he had been thwarted in his rightful efforts to introduce competent evidence. The judge summarily held him in comtempt of court. This Court reversed, holding that the remarks caused neither delay nor obstruction to the proceedings; and that, while they may have suggested disrespect, they did not constitute the imminent threat required for a summary conviction.

Haas' conduct here did not approach the vehement behavior presented to the court in Oliver. Haas did not disobey any coherent ruling or ask an improper question. He tried to argue that his questioning was proper, and that he should be permitted to continue. The Court's ruling had been deliberately cryptic, calculatedly ambiguous. Haas was pressing his "right to ask these questions," in re McConnell, supra, and the Court was determined to cut him

off. In In Re Dellinger (Dellinger I), supra, 461 F.2d at 399, this court stated that,

> Where the court is arbitrary or affords counsel inadequate opportunity to argue his position, counsel must be given substantial leeway in presenting his contention, for it is through such colloquy that the Judge may recognize his mistakes and prevent error from infecting the record. It is, after all, the full intellectual exchange of ideas and positions that best facilitates the resolution of disputes.

Here the Court was concerned with stifling a dispute, not resolving it. Haas was not interfering with the conduct of the court's business, United States v. Wilson, 421 U.S. 309, 315 n. 6 (1975), nor was there any vehemence in his language which could pose a threat to the administration of justice. Eaton v. City of Tulsa, 415 U.S. 697, 698 (1974). He spoke purely in the context of the case he sought to present. He was not directed by Judge Perry during the side-bar to desist from anything. When the court stated: "You will not go into the subject matter any further," Haas realized the Court meant to shut off the entire area, and said, "I didn't even get a chance to argue it. Well, Judge, the deal -- / THE COURT: I said you will not get into it any further." Haas thereupon tried to elaborate the need for further questions and so used the forbidden words, and was immediately cited for contempt and taken from the courtroom. He was not allowed to make any answer or argument.

Moreover, the Judge cut him off arbitrarily just when he was obliged to give him substantial leeway, Sacher v. United States, 343 U.S. 1, 9 (1952); see also United States v. Schiffer, 351 F.2d 91, 94 (6th Cir. 1965), cert. denied, 384 U.S. 1003 (1966); and preserve his right to "fearless, vigorous and effective advocacy." Offutt v. United States, 384 U.S. 11, 13 (1954). This Court is familiar with the problem:

> (W)hen the conduct complained of is that of an attorney engaged in the representation of a litigant, the search for (the) essential elements of the crime of contempt must be made with full appreciation of the contentious role of

> trial counsel and his duty of zealous representation of his client's interests. In re Dellinger (Dellinger I) supra, 461 F.2d at 397.

Haas was attempting to question his witness, a chief adversary in the case, about "subject matter" which he reasonably believed to be proper and relevant. Although counsel for defendants had objected to a previous question outside the presence of the jury, the judge made no ruling on the propriety of the line of inquiry. It was reasonable for Haas to proceed with his questioning, especially since the judge merely struck the question asked prior to the side-bar conference. It was only after Haas put his next question that the Court informed him that the "subject matter" of the questioning was foreclosed, and even then the subject matter was not defined. Because counsel had not presented argument on this issue, he tried to state a position. The judge interrupted, Haas responded, and was abruptly held in contempt of court.

For Haas to have acted differently would have constituted dereliction of his duty as an advocate. He did not insult the bench; he presented his claim in the traditional context of an adversary proceeding. The "cover-up" referred to was the reason for calling the witness. The trial judge, who had sparred bitterly with Haas and other counsel for the plaintiffs throughout the lengthy trial, reacted to the remarks as though facing a personal affront. Such sensitivity on the part of judges undermines, to put it mildly, the precept that judges should be "men of fortitude, able to thrive in a hardy climate." Craig v. Harney, 331 U.S. 367, 376 (1947).

Given the critical interest of the witness and the predilection of the Court in suppressing the subject matter --and particularly the telltale memorandum-- Haas needed to be "persistent, vociferous, contentious and imposing, even to the point of appearing obnoxious . . . ." and "with impunity (to) take full advantage of the range of conduct that our adversary system allows." Dellinger and Oliver, supra. He barely even got started.

The Record is unclear as to for which remark the Court found Haas in contempt. The judge's order refers specifically to the transcript, [Tr.27984-87] and the transcript reveals that Haas was ordered in contempt for his "last remark." The transcript shows Haas had said, "That is part of our complaint, that they covered up, Judge." Since the colloquy developed quickly, Judge Perry probably was responding more to Haas' prior remark: "Judge, we can't cover-up the cover-up." [Tr.27984] This confusion dictates reversal on two grounds. First, the very ambiguity illustrates the insufficiency of the remarks as a basis for summary contempt. Second, by exact reference to the Court's order and statement, this Court can only infer that the basis for the contempt was the last remark, which is clearly harmless and non-contemptuous.

Rule 42(a) provides that the order of contempt shall "recite facts and . . . be signed by the judge and entered of record." Fed. R. Crim. P. 42(a). The present case does not comport with Rule 42 since it does not adequately state the facts upon which the citation is based. See United States v. Meyer, 426 F.2d 827 (D.C. Cir. 1972), United States v. Wilson, supra, 421 U.S. at 315, n. 6.

B. TAYLOR: NOVEMBER 11, 1976.

In late October 1976 the Plaintiffs' case moved from their own account of the raid to the critical physical evidence of the shooting inside the apartment. Their witness was Robert Zimmers, the number one firearms expert for the F.B.I. for many years, having worked on the Kennedy Assassination. Of the the government officers to become involved in this case, only Zimmers firmly placed his obligation to the truth above his loyalty and fealty to "Law Enforcement." He cooperated fully with the Plaintiffs because he knew the evidence showed they were telling the truth about "search and destroy." He drew the truth out of the scientific evidence, and it established the Plaintiffs'

case. In some way the Court regarded his evidence against the raiders as the ultimate betrayal. As details about what happened began to come in, so did the physical evidence itself --guns, shells, bullets, photographs, and the model of the apartment. A series of stipulations were entered into as the officers' weapons were admitted one by one, that Exhibit such and such is the gun carried on the raid by Officer so and so. The first was on November 1 and involved George Jones' gun.*

Later, in stipulations about other items, the Court allowed the defense to substitute the words "service of a search warrant" for "raid," despite the way that wording begged a central question in the case.** Now, on November 9, Haas again presented Jones' shotgun to Zimmers:

> MR. HAAS: And is that the item, RZ51, the double standard sawed-off shotgun which we have shown you earlier, sir?
>
> MR. ZIMMERS: . . . Yes, this is the one.
>
> MR. HAAS: And it has been stipulated that this is the weapon that was carried by Officer Jones on the raid of December 4, 1969. [Tr.19766]

At this point defense counsel John Coghlan objected, and the Court granted a

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* MR. HAAS: I now show you what I will mark as RZ51 and ask you what type of weapon is this, sir?

MR. ZIMMERS: A double-barrelled Stevens shotgun, which bears serial number 43312 . . . .

MR. HAAS: Could we have a stipulation, your Honor, that this weapon was taken on the raid by George Jones?

MR. WITKOWSKI: Yes.

THE COURT: So stipulated . . . Let the record show that counsel has so agreed.

MR. WITKOWSKI: Yes, your Honor.

[Tr.19868] Similar stipulations were agreed upon regarding 14 other weapons carried by police [Tr.19059-69].

** The use of "wervice of search warrant" was a tactical ploy by the Defendants which they often used to attempt to influence the jury [Tr. 5311-18] at other points they readily used the term "raid". [Tr. 25271].

hearing outside the presence of the jury. Coghlan said the defendants never entered into a stipulation using the word "raid," and accused Haas of a "deliberate, willful and intentional attempt to prejudice the jury." Haas said his statements of the stipulation was accurate, and suggested that Coghlan was referring to the other stipulations, involving bullets and shotshells* As plaintiffs did not possess a transcript, Taylor requested a recess to enable him to inspect the Court's copy to clear up the dispute. Judge Perry denied the request. [Tr.19766-70].

Upon the jury's return, the judge said, "Mr. Haas has deliberately and wilfully misread a statement. I direct you to read that statement, that stipulation, corrected." [Tr.19772] Haas said he had stated the stipulation correctly, and so Judge Perry asked Coghlan to "state the stipulation correctly." Coghlan extemporized:

> MR. COGHLAN: The stipulation is that the weapon that was shown to the witness was one of the weapons carried by the officers serving a search warrant at 2337 W. Monroe.
>
> THE COURT: Now that is it . . . .

This took place on Tuesday, November 8. On November 9 and 10, several requests were made by plaintiffs' counsel to review the Court's transcript, and denied. [Tr.19778-824]. Judge Perry finally permitted counsel to review the transcripts late on November 10, the trial having continued in the meantime.

On Friday morning, November 11, Taylor and Haas presented a Motion to Correct Prejudicial Remarks Made by the Court to the Jury and For Mistrial, citing the transcript in claiming that Haas' statement was not a misrepresentation. Without reading it, the Judge said he would take the motion under advisement, and gave the defendants ten days to respond. Haas protested that the Court was obliged to cure the prejudice as soon as possible, but the Court would not reconsider. [Tr.19984] Counsel for the Plaintiffs returned to their table flinging down their papers in anger and frustration at the Court's con-

* Three additional police guns had later been introduced with a stipulation that they were carried "on the service of the search warrant."

tinuing stonewall tactics. As he slapped the papers on the table, Taylor's fingers grazed the pitcher, which skittered across the table and fell to the floor in front of the jury box. The glass lining broke and the water spilled on the rug. The Judge saw the gesture but clearly didn't see the pitcher go. Ever the snitch, Coghlan instantly put his testimony into the summary proceeding which quickly took place. As the transcript shows, the whole thing took place after the Court had declared a recess:

> THE COURT: I have entered my order.
>
> Now, there is one juror who has not arrived yet. We will now recess until --
>
> All right. Let the record show the conduct of both counsel in throwing papers around and one of them -- what is it that is broken over there?
>
> MR. COGHLAN: Sir, there is broken a glass water pitcher.
>
> THE COURT: All right. Mr. Taylor, you did that, and you are now held in contempt of court, and the Court now orders you committed to the custody of the Attorney General of the United States for a period of 24 hours, and orders the Marshal to tak you into custody forthwith.
>
> MR. TAYLOR: May I be heard, your Honor?
>
> THE COURT: No, sir. [Exit]
>
> MR. TAYLOR: I have the right to speak before I am summarily sentenced, and I want to say --
>
> THE MARSHAL: This court will stand in recess.

A brief recess was held. When court resumed, the Judge directed that the pitcher and debris be left in place for the jury to see, but gave them no explanation about it. Repeated requests by Haas to be heard on the incident outside the presence of the jury were denied, but Judge Perry granted a recess to Special Assistant Corporation Counsel Camillo Volini, in order to enable Volini's photographer to take pictures of the broken pitcher. [Tr.19990] Judge Perry refused to permit the press to take photographs, but instructed Volini they "may have a copy of the picture that is taken," and authorized defendants'

counsel to have the press "pay you for whatever it costs" should they desire a copy. [Tr.19992]

An attorney, David Thomas, appeared on behalf of Taylor and attempted to be heard. He was denied this right, and directed to appear later that day. At 4:00 p.m., instead of permitting argument on behalf of Taylor, Judge Perry presented an order and an amended order holding Taylor in contempt of court, filed them, and then commuted the sentence to time served. The Order said:

> The Court finds that a motion was made by counsel for plaintiffs herein, and the Court ordered counsel for defendants to answer the same within 10 days. Both Jeffrey Haas and G. Flint Taylor, two of the attorneys for plaintiffs, demanded an oral hearing, which the Court denied. Immediately after the Court refused to hear them orally, Attorney G. Flint Taylor, in a fit of anger, threw paper, books and other objects on the table for counsel, including a decanter with an inside glass lining, which was broken. Water and glass were sprayed over the floor in front of the jury box. Present in the Court were a number of spectators and representatives of the press.
>
> The Court finds that such action was a contemptuous and constituted willful and deliberate contempt of this Court in its presence at 10:35 a.m., November 11, 1976. The Court does hereby find Attorney G. Flint Taylor in contempt of Court, and does hereby order and direct that he be and is hereby committed to the custody of the Attorney General of the United States for a period of 24 hours, ending at 10:35 a.m. on November 12, 1976.
>
> The Court further orders and directs the United States Marshal to immediately execute this order and take Attorney G. Flint Taylor into custody forthwith.

The amended order read just the same, except that instead of the words, 'in a fit of anger," emphasized above, it had the words, "in the presence of the Court."

The Contempt Judgment Against Taylor Was Also Unfair and Erroneous, and Must be Vacated.

The Taylor judgment suffers from the same intrinsic infirmities as that against Haas --ambiguity about the gesture, and the evidence, in both

the record and the citation; lack of proof of intent to obstruct, or of any material obstruction; peremptory refusal of the right to answer or plead; and the strong presence of provocation and bad motive on the part of the Court. The Court had recessed, and evidently didn't really see what happened in any event. Moreover, what he did know for sure without Coghlan's tattling --that Taylor had gestured in anger-- he took out of his order.

He took it out because he was maneuvering hard to keep his advantage --he knew he still had to own up to being wrong about the "raid" stipulations. That was also why he ran off the bench instead of letting Taylor apologize, then released him in the afternoon without hearing anything more.* Judge Perry's ultimate order disposing of the motion he refused to hear that morning is a masterpiece of doubletalk: "The Court finds that Attorney Jeffrey Haas well knew . . . that the defendants and their attorneys were unwilling to again have Jeffrey Haas quote . . . them as stipulating (about weapons) on the raid . . . [and Haas] understood when the Court approved the stipulation to be used thereafter as excluding the word 'raid' and substituting the words 'service of a search warrant.'"* The Court had done no such thing. He simply made this up. Meantime, he held Taylor in contempt for fighting to bring out the fact that the Judge spoke falsely.

C. THE DISTRICT COURT ABUSED THE CONTEMPT POWER

The case against the Judge on the main appeal, obviously, is part and parcel of the lawyers' case against the contempt citations, and the infirmities of the contempt judgments argued above, while fully sufficient on their own merits to defeat those judgments, are subsumed in the overriding bias

* Emphasis added. See Appendix A.

which soured this phase of the trial as it did every other phase. This is most clearly seen in the Haas episode, wherein the court's acts seem almost zany in a cold record, and it is necessary to recall his inveterate rage at the suggestion that he abetted cover-up, in order to understand what really happened.

Indeed, the evidence that Hanrahan struck a deal with the Nixon Administration and the F.B.I.*, to mutually cover up the murders by scuttling indictments all around, is one of the most critical points in the case. Haas pursued it with Hanrahan on the witness stand. Judge Perry, who certainly knew the Plaintiffs' case, and Haas, well enough to know Haas would push the "subject matter" of the deal very hard with Hanrahan, was equally resolved to stonewall that subject matter by all means at his command. Thus his hair-trigger response when Haas, caught off guard by the springing of the trap, protested "covering up the cover-up." Given not a word of answer to the citation, let alone the right to argue or even know what subject matter was going to be proscribed, Haas was behind bars almost before the words were out of his mouth. It was one of the strongest-smelling incidents of the whole trial.

Taylor, by contrast, gave the judge grist for his mill, by letting him get his goat, to mix metaphors. In a case without such pervasive bias and unremitting provocation by the Court, some rebuke might arise on such a gesture --if such a gesture would itself arise. As he has said from the start, Taylor never meant to hit the water pitcher, and so he would have told the Court if he'd been given a chance to speak. But the fact is that the

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* See above Evidence, Section IV.

Judge was constantly stifling Taylor, on an almost daily basis, because Taylor was by far the best versed person in the room on the facts and the evidence, and was consistently right in disputes about the record, for which the Judge could never forgive him.**So Taylor had constantly to endure the Court's fine scorn, and no amount of comeuppance ever seemed to give the Judge caution about his repeated adamant misstatements of the record. (See Appendix A .) Moreover, he countenanced baiting and harassment of Taylor from the defense table* without let-up, even unto the grossly perverted gay-baiting psycho-mania in which Coghlan indulged himself towards the end. The Judge ruled that Taylor brought it on himself [Appendix A].

The day of the contempt was just another day. The Judge was entertaining one of the defendants' more preposterous efforts to lean things their way by suddenly making the rule that the word raid could not be used, and the matter had developed for three days as he stonewalled Taylor and Haas with his refusal to admit that they were right and he was wrong. He finally got them good and mad by refusing to hear them after barring them from the transcript for three days; and he was thus able to lock Taylor up rather than have to admit he was wrong about the stipulation.

And he was certainly wrong about refusing to let Taylor answer and purge himself, or try to. There is scarcely any rule in law more fundamental, as Judge Friendly points out in his dissent to U.S. v. Galante, 298 F.2d 72 (2nd Cir. 1969), a learned disquisition wherein he called on the Court to reverse

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* Which was nothing compared to what went on in the halls, where the defendant police officers, who were paid full-time to hang around at the trial, were often startlingly open in their threats, and, like Coghlan, always sexually perverse in their bullyrag, which was a constant thing the Plaintiffs and their lawyers were forced to endure. In particular, Carmody, Gorman, Davis, Groth, Ciszewski and Jones never tired of this and were always ready with some vile little taunt when plaintiffs' attorneys would pass them in the hall. They were palpably full of hate, and Haas and Taylor had to run the gauntlet half a dozen times every day.

** The prejudicial remarks episode is a fine example of this -- Taylor had the stipulation correctly recorded in his trial book and felt certain that the transcript, if he could get access, would prove him correct, as it did. The Court, in its order exonerating itself, twisted this into blaming Taylor for the altercation, saying he had his trial book ready because the Plaintiffs had schemed to violate the order.

sua sponte --where the contemnor had not even demanded the opportunity, and the point had not been urged on appeal. Cf. also Katz v. Murtaugh, 28 N.Y.2d ___ (1973); Rodriguez v. Feinberg, 33 N.Y.2d ___ (1976).

Every system gives the accused a chance to speak before it passes sentence, but not Judge Perry. With him, the contempt power was not a safeguard, but a strategic weapon: defensive with Haas, where the critical "subject matter" was besieged, offensive with Taylor, whom the Judge never stopped trying to belittle, intimidate, and upset. Day after day for eighteen months, Haas and Taylor had to come back to a nightmare of perversity and pique in which the bizarre conduct of the Court continuously mocked their diligent efforts to put on a momentous case against legitimated murder, and defiled the memory and sacrifice of the two innocent young black men who died in the Death Squad raid. On the two given days of the contempt judgments, there was an extra pound of flesh exacted --which relates to the overall price they have paid in the same way insult is added to injury.

The summary contempts must be reversed on their merits, as we have seen. But more immediately and imperatively, they must fall with the entire structure of the Judge's evil conduct in this case; and his abuse of the contempt power both in these judgments and in the numerous unwarranted threats he made throughout the trial, must be specifically and forcefully rebuked.

CONCLUSION

As any honest and experienced jurist would have known it was going to be, the case made out by Plaintiffs was easily sufficient in all respects to go to the jury on each Defendant with every count. Equally clear is the vengeful disposition of the judge who so assiduously sought to hold back the tide of that reality. He conducted a trial which was an agonizing reinactment of the raid and coverup --a "counterintelligence action" in which the Defendants again cooperated to "neutralize" and "disrupt" the Plaintiffs and their lawyers in the Courtroom by "discrediting" them to the jury, whom they constantly sought to "misdirect." The Federal Defendants again stayed in the background, hiding their involvement while encouraging the State Defendants and their counsel to do the dirty work. This time, in their corner was the trial Judge who unfailingly supported their cause because he believed in it and was committed to its triumph.

In granting the directed verdicts, as in his conduct of the entire trial, he erred massively, stubbornly, and wilfully; heedless of the truth and of Plaintiffs' basic rights; contemptuous of elementary rules of logic, law, and fairness; and with studied and outrageous ignorance of the most pointed admonitions of this Court in a series of prior cases --all involving black persons seeking to vindicate their civil rights in a court of the United States.

He must be reversed in every wrongful action below which is not moot, and rebuked for those acts which are; and Appellants must be made whole upon the record for a new trial under the detailed supervision of this Court. Their rights to all the evidence on discovery must be spelled out and enforced; all the proper Defendants in the conspiracy must be joined; the admissibility of critical items suppressed by Judge Perry must be pronounced; the propriety of challenge on cross-examination, and of admissions and prior statements as evi-

dence, must be upheld; and the Defendants properly punished for their brazen misconduct and obstruction which is underscored by their massive coverup of documents and their repeated lying to the Court about them.

Indeed the judgment of this Court of Appeals must be upon Judge Perry for his partisan defense of those caught murdering FRED HAMPTON and MARK CLARK, and violating the basic human rights of young, black people, and covering up the truth about it to this day --all by conspiracy, plotting and racism of the most frightening sort.

This Court must see to it that the conspiracy proceeds no further, as well as that those shown to be responsible are made accountable. Plaintiffs have sought to prosecute this case for eight years in the public interest as well as their own. The case they managed to make out in this trial more than vindicates the worthiness of their claims. It is a conclusive judgment on the failure of the entire apparatus of law enforcement, government, and justice, to rise to the occasion created by the facts in this case, and in the case of the campaign against the Panther Party nationwide. F.B.I. racial "counterintelligence" was a star-spangled blueprint for genocide, and still is if allowed to exist, and if those who operate it are still allowed to do so. They still have the mission of "neutralization" against their perceived political opponents, and they still demand immunity --as in the Kearney case-- for their operations. They still purport to be protecting to country; and they still do not accept the Bill of Rights.

For all this, the undersigned demand detailed and determined redress, to be ordered and guaranteed by this Honorable Court through the full and timely exercise of its judicial responsibility, upon the authority of the truth and the People of the United States, until full justice is finally done. All power to the People.

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Respectfully Submitted,

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